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The Solicitors' Journal

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Current Topics.

The Lord Chancellor's Illness.

THE MARQUESS OF SALISBURY announced in the House of Lords on Tuesday that the Lord Chancellor, acting on medical advice, had found it necessary to absent himself from his official duties for a few weeks. All will sympathise with Lord CAVE in his illness, which has undoubtedly been caused very largely by the heavy strain of judicial and political work. The amount of work of a political and other non-judicial character that falls to the Lord Chancellor to do is sufficient to test the powers of endurance of any man. It is time that some relief in that direction was forthcoming, so that the head of our judiciary may give his undivided attention to matters affecting the administration of justice. Fortunately, on this occasion, as the Lord Privy Seal assured the House of Lords, there is likely to be no great difficulty as respects the judicial work of the House. "With the very great assistance which Viscount HALDANE has given," the work is well in hand. We wish Lord CAVE a speedy and complete recovery.

Commercial Court Bar and the Judiciary.

THE THREE recent appointments to the High Court bench must have been something of a blow to those who had come to regard judgeships on the common law side as the special preserve of practitioners in the Commercial Court. During recent years the frequency with which those who had specialised in that tribunal received promotion afforded some ground for this assumption, but distinguished though these have proved themselves, the mere fact that they have devoted themselves exclusively to the class of work with which the Commercial Court is concerned, has had its drawbacks when the appointees have had to turn their judicial attention to very different subjects, and in particular to the administration of the criminal law, which of itself requires much more consideration than is usually supposed. We are very glad therefore to observe that all the three new judges have had a wider outlook than is usually obtained by those whose practice is confined to the interpretation of charterparties and bills of lading. It is true that Sir TRAVERS HUMPHREYS has had little experience in dealing with civil litigation, but he comes to the bench with a ripe experience in the administration of the criminal law, an equipment which will prove a valuable asset particularly in the Court of Criminal Appeal and in the Divisional Court, when taking the Crown Paper. It is no doubt a novelty to find a practitioner who has devoted his energies to the work of the criminal courts, being promoted to the High Court bench, but it is interesting to recall that the late EARL OF HALSBURY—Sir TRAVERS HUMPHREYS' uncle by affinity—won his first triumphs at the Old Bailey, where for a time he specialised. The new judge, we doubt not, will speedily find himself at home with the normal class of litigation which comes before the court.

Revival of a Derbyshire Custom.

AT THE recent Derbyshire Assizes the Grand Jury revived what was stated by the foreman, Mr. ST. JOHN RAIKES, K.C., to be a custom of forty years ago, in making the following presentment to Mr. Justice HAWKE: "We, the Grand Jury of the County of Derby, present our respectful congratulations to your lordship upon your elevation to the High Court bench, and desire to express the hope that you may be spared for many years to administer justice and to fulfil the responsible duties of the high office to which you have been called by His Most Gracious Majesty the King." The presentment having been passed down to Mr. G. P. BANCROFT, the Clerk of Assize, and by him to the bench, the learned judge replied that it was a very agreeable custom which had been revived. It was a great honour to have that presentment from such a body, and, after being handed to a lady sitting near him, it would be kept in their family archives with much gratitude to the grand jury. Having been taken a little by surprise, he could not say more than to thank them very deeply. Earlier in the day, in charging the grand jury, his lordship had remarked that as at Lincoln, he had found an old friend as foreman of the grand jury, so also he had found one at Derby. He saw an advantage in the fact that the presence of Mr. RAIKES assured him that the members of the grand jury had as foreman a gentleman of great experience to guide and advise them. (Mr. RAIKES is chairman of the County Quarter Sessions.)

Refusal of Wife to Divorce Husband.

IN A case which was recently before Mr. Justice HILL (*Blanchard* v. *Blanchard*), a wife who was clearly entitled to a decree of dissolution refused to ask the court to grant such a decree, petitioning instead for a judicial separation. The wife, in taking this course, was not apparently influenced by any religious scruples on the matter, nor by the hope that the husband might some day return to her, nor by any mistaken idea that by obtaining a divorce her rights of maintenance against him would not be so extensive as they would be

if she was merely separated, but with the object of punishing her husband and the other woman by avoiding the one step which would leave them free to marry. The nature of the jurisdiction of the court is not the same in the case of a decree for dissolution as in the case of a decree for judicial separation. If s. 178 (3) is contrasted with s. 185 (2) of the Supreme Court of Judicature (Consolidation) Act, 1925, it will be observed that the court must grant a decree for divorce where all the essentials are proved, but that it has a discretion in granting or withholding a decree for judicial separation; but the court will not grant a decree for separation where the petition is brought merely for a collateral purpose. Thus, in *Matthews* v. *Matthews*, 3 Sw. & Tr. 161, the court refused to grant a decree because the application was not a *bonâ fide* one for the protection of the wife, but for a collateral purpose, i.e., "to put the wife in a certain position with regard to certain property different from what she occupied under a deed of separation" (*ib.*, at p. 163). In *Blanchard* v. *Blanchard*, however, Mr. Justice HILL felt himself compelled to grant the decree since the wife was claiming maintenance and custody, such matters being, as the learned judge pointed out, part of the purpose at any rate for which the suit was being brought. There is real force in the strictures, passed by the learned judge upon this defect in our divorce laws. Our law gives its sanction to the dissolution of certain marriages by divorce; in other words it recognises that the best interest of the community is served by the dissolution rather than by the perpetuation of certain unions. Why should the interests of the community be postponed to considerations of conjugal jealousy and revenge?

Shop-lifting.

THERE ARE two types of the above, as the customer may act (*a*) independently; or (*b*) with the aid of a confederate on the staff. In case (*a*) the customer's offence is plainly larceny; but in case (*b*) the precise charges are difficult to frame. This is especially the case where some of the customers have a credit account, and there is no strict rule as to whether the principal, a manager of a department, or the assistants are empowered to allow goods to be taken on credit or approval. Even where a definite rule exists, the exigencies of trade may have resulted in greater latitude being given both to assistants and customers than the rule permits. After articles have been missed, a detective officer usually keeps watch, and subsequent events may be as follows: A suspected customer is seen to select certain articles, and hand them to an assistant. The assistant wraps them up in a parcel, and is seen to receive money in exchange. On leaving the counter the customer (on being asked) shows the contents of the parcel —say goods to the value of £1, which have been obtained for half a crown. The customer's explanation is that this is a first instalment, as she has an account. The owner of the business may deny this, and also the authority of his assistant to grant credit. A prosecution is therefore begun, in which the assistant is charged with stealing and the customer with receiving the goods. The legal position has two aspects: (1) the asportation is complete when the assistant wraps up the parcel with felonious intent, as the goods are thereby taken out of the possession of the true owner, with intent permanently to deprive him thereof within the meaning of the Larceny Act, 1916, s. 1, and the customer on taking the parcel receives the same goods knowing the same to have been stolen; (2) the asportation is complete when the customer takes the selected articles from the counter with felonious intent, and the offence of larceny is then complete, so that no charge of receiving can be sustained; the assistant, in wrapping up the parcel, is merely an accessory after the fact to the larceny. The line between larceny and receiving may thus be very fine, and it should be ascertained that the correct offence is charged before permitting the case to go for trial, or (at quarter sessions) to the jury.

Freedom of the Press and Contempt of Court.

THE JUDGMENT of HEWART, C.J., and AVORY and BRANSON, JJ., in the application of JACOB or JOHN FACTOR to commit the editor of the *Daily Mail* for contempt shows that the Court will not allow its aid to be invoked to suppress the exposure by a newspaper of practices injurious to the public. Credit must be given to the proprietors of the leading modern journals in taking serious pecuniary risk for causes they deem in the public benefit. Reference to *Robertson* v. *Labouchere*, 1878, 42 J.P. 710, will show how narrow was the escape from committal of HENRY LABOUCHERE, the proprietor and editor of *Truth* in its earlier years. There, the defendant LABOUCHERE, who had continued his comments on the plaintiffs' conduct after writ served, stated that he intended to justify the libel, and the court was equally divided, precluding an order being made. In the present case the *Daily Mail* had published a paragraph associating FACTOR with a certain bogus solicitor who had been sentenced to twelve months' imprisonment with hard labour, an association which FACTOR strongly denied. He has brought an action now pending on the paragraph, and sought to prevent further disparaging references to his activities in the paper. The court noted that the statement of claim was carefully confined to the allegation that the plaintiff was carrying on his frauds in conjunction with the convict MONTGOMERY, and held that, since the fact of the alleged association was not repeated, mere statements that he was carrying on his frauds, in respect of which he had not brought further action, was not likely to prejudice the issue whether he was associated with the other man. The court was of course satisfied of the editor's good faith and motives. Given such satisfaction, however, there was the further issue whether comments made with the sole and sincere desire to protect the public might not prejudice the course of justice, and on this point *R.* v. *Blumenfeld, ex p. Tupper*, 1912, 28 T.L.R. 308, was cited, a case in which the editor of the *Daily Express* had taken a similar course. The tendency of the court to allow comment *pendente lite* may be traced from the decisions in *Re Crown Bank*, 1890, 44 C.D. 649, and *Coats* v. *Chadwick*, 1894, 1 Ch. 347, to their disapproval in *R.* v. *Payne and Cooper*, 1896, 1 Q.B. 577, and *Re New Gold Coast Exploration Company*, 1901, 1 Ch. 860. As a matter of coincidence, for motions to commit editors for contempt are not made every day, and perhaps hardly every year—the adjoining column of the *Times*' registers the somewhat narrow escape of another editor, whose comments were reasonably interpreted as impugning the fairness of a judge.

Disorderly Public Meetings.

THE RECENT circular letter addressed to Chief Officers of Police in England and Wales by the Home Secretary, containing suggestions for dealing with anticipated breaches of the peace at political meetings, will be received with widespread satisfaction. He advises that they should be ready to entertain applications from responsible persons of all political parties for police to be present, without charge to the promoters, inside a meeting as well as outside, when there is reason to apprehend any interference with the meeting calculated to lead to disorder or breach of the peace. Dealing with public meetings, it is said in the Police Code, 18th Ed., at p. 159, that "When the meeting is held on private premises . . . . police should not enter the building unless called on . . . to suppress an actual breach of the peace, or to take into custody persons charged with some offence for which there is power to arrest." It is obvious that in particular localities where organised and systematic efforts are made by irresponsible persons to interfere with the business of political meetings, the actual presence of a number of policemen inside a building would prove an effective deterrent to such conduct. It is to be hoped that whenever the necessity may arise every advantage will be taken by political party leaders of the Home Secretary's advice, and every assistance willingly given

by chief constables. It is as the result of numerous complaints of the apparent failure of the Public Meeting Act, 1908, that the Home Secretary has advised the above measure. By that Act a person acting in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is called together shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883, if the offence is committed at a political meeting between the date of the issue of a writ for the return of a member of Parliament and the date at which a return to the writ is made. The punishment on conviction on indictment for such offence is prescribed by s. 6 (1) of the Corrupt and Illegal Practices Act, as imprisonment, with or without hard labour, for a period not exceeding one year, or a fine not exceeding £200.

Theft by Hotel Servant.

THE CASE of *Charnier* v. *De Vere Hotels Ltd.*, decided by Mr. Justice SALTER on the 16th inst., raised questions of general interest concerning the liability of hotel keepers for thefts committed by their servants. The plaintiff, who lives at Budapest, was in this country in 1926, and arrived on the 28th February, at the De Vere Hotel, where he stayed for some months. He had with him some jewellery, which for certain reasons he did not entrust to the hotel management to place in their safe. The desk clerk, however, informed the plaintiff that the staff was reliable, and the chamber-maid was instructed by the plaintiff to see that his bedroom door was kept locked. There was no drawer in the plaintiff's room which locked, and accordingly, during his stay at the hotel his practice was to leave the jewellery in an unlocked drawer. In June, a painter in the whole-time employment of the defendants, was admitted by the chamber-maid to the plaintiff's room to wash the paint. Whilst there, he opened a drawer for a match and observed the jewel case. Next day he returned, and pretending that he had not finished the work, was again admitted to the room. On this occasion he took the jewellery which, although of the value of £1,700, he sold in Hatton Garden for £4. The plaintiff claimed damages from the hotel company upon the ground that the loss was due to the " wilful act, neglect, or default " of the defendants or their servants. The authorities show, however, that this exception to an innkeeper's statutory exemption from liability is displaced if the innkeeper proves that the cause of the loss was the guest's own negligence. The defendants contended in the first place that the plaintiff was precluded by contract from claiming for a loss where no receipt had been obtained from an official of the hotel. This contract was sought to be made out (1) from a notice printed on the top of the page signed by the plaintiff in the register book, and (2) from a notice on the wall in the bedroom. The main defence relied upon, however, was that the loss was caused by the plaintiff's own negligence. It became unnecessary to decide whether the plaintiff was precluded by contract from making his claim; but the learned judge observed that he " had great doubt whether there was any contract " arising in either of the modes suggested by the defendants. It may be pointed out that as the defendants were bound to receive their guest and the guest was bound to sign the register, it would seem hardly possible to extract a contract out of such signature. But on the question of negligence, the judge decided in the defendants' favour, holding that they had proved gross carelessness on the part of the plaintiff and that such carelessness had been the real cause of the loss.

Form of Legitimacy Declaration.

THE RULES OF the Supreme Court do not prescribe any particular form of legitimation decrees under the Legitimacy Act, 1926, and a question as to the form of decree which should be made in such cases has just been discussed in *Burnham* v. *Attorney-General*.

It will be observed that the County Court Rules (see 71 SOL. J., p. 473) expressly provide for such a form and the material parts of the decree are as follows:—

> " It is decreed and declared that C.D. of . . . and E.F. of . . . in the said petition mentioned were lawfully married at . . . on the . . . day of . . . and that by such marriage the said A.B. was legitimated for the purposes of the Legitimacy Act, 1926 as from the . . . day of . . . (being the date of the said marriage) (or as from the 1st day of January, 1927) (being the date of the commencement of the said Act)."

In *Greenaway* v. *A.-G.*, 44, T.L.R. 124, the declaration prayed for was to the effect that the parents of the petitioner were lawfully married at the place and on the date mentioned by the petition and " that by such marriage and under and by virtue of the Legitimacy Act, 1926, the petitioner had been since the 1st January, 1927, the legitimate son of his said parents."

It should be observed of course that there may be cases in which the date of the legitimation may be not the date of the commencement of the Act (1st January, 1927) but the date of the marriage, in which event such latter date would be inserted in lieu of the 1st January, 1927.

The report in *Burnham* v. *A.-G.* does not set out the *ipsissima verba* of the declaration prayed for, nor of the decree, but as far as can be gathered therefrom, the decree followed the form of the declaration prayed for in *Greenaway* v. *A.-G.* and if the declaration in that case is compared with the form of the decree under the County Court Rules, it will be noted that the two are almost identical. It would appear therefore, that in framing a declaration in High Court proceedings, one could not go far wrong if one followed closely the form of decree prescribed by the County Court Rules.

Admissions of Adultery.

A GREAT DEAL of the evidence acted upon in courts of law consists of admissions. In civil cases the ground is cleared by ascertaining what facts, being admitted, need not be proved; in criminal cases, confessions made to police officers and other witnesses are received provided that they are shown to have been made voluntarily. The sound principle underlying the practice is that parties are not likely voluntarily to make admissions against themselves unless such admissions are true. But there are exceptions, though they are more apparent than real. Admissions in matrimonial cases, though they seem against the interest of the party who makes them, may sometimes be untrue. SALTER, J., at the recent Norfolk Assizes, observed: " Admissions of adultery are most unsatisfactory. They tend to collusion, the one thing I have to prevent. There is no reason why adultery cannot be properly proved." In this instance there was a written confession. It is true that in many cases both parties are so desirous of obtaining a divorce that collusion is more than likely and therefore admissions are open to suspicion. The admissions are to be received in evidence, but, as was said by COCKBURN, C.J., in *Robinson* v. *Robinson*, 1859, 1 Sw. & Tr. 362, " with the utmost circumspection and caution." Recent cases are *Collins* v. *Collins*, 1916, 33 T.L.R. 123, and *Codron* v. *Codron*, 1927, *The Times*, 12th July. In courts of summary jurisdiction adultery is sometimes an issue, as, for instance, when a husband is opposing the making of a maintenance order or is asking to have such an order set aside on the ground of adultery. Here it is generally so plainly against the wife's interest to make confession that if she does so it is safe to act upon her admission unless some exceptional feature in the case suggests ulterior motives. The sound rule in the trial of all matrimonial cases, even when the law allows the court to act upon an admission, is to take precautions against collusion, bearing in mind " the great principle of English law that the court should not lend its sanction to an arranged set of facts": *Naylor* v. *Naylor*, 1920, 36 T.L.R. 244.

Finance Act, 1927:

Income Tax, Super-Tax, and Sur-Tax.

By H. ARNOLD WOOLLEY, Solicitor.
(*Author of "A Handbook on the Death Duties."*)

(*Continued from p.* 114.)

The following sections relate to Super-tax, and come into force as from 6th April, 1928, and so will apply to the Super-tax due on 1st January, 1929 (which is based on the income for 1927-28) :—

Sections 31 and 32 aim at preventing the avoidance of Super-tax through the formation of limited companies which do not distribute their profits as income. At present the Revenue's powers with regard to these companies only apply to *private* limited companies incorporated since 5th April, 1914. From 6th April, 1928, onwards these powers apply to "any company which is under the control of not more than five persons and which is not a subsidiary company or a company in which the public are substantially interested."

The expressions used in this definition are defined in s. 31 (3), and it will only be said here that the public will be deemed to be "substantially interested" if ordinary shares carrying at least 25 per cent. of the voting power have been unconditionally allotted to or acquired by the public and the shares have been dealt with and officially quoted on a Stock Exchange during the company's relevant accounting year, and apparently companies incorporated prior to the Companies Act, 1908, are exempt.

The Act itself must be referred to for the full definitions.

In the cases of these companies the Commissioners have power to say whether or not a reasonable proportion of the profits is being paid out as income, and to assess to Super-tax as if a reasonable proportion is paid out (whether it actually be paid out or not). These two sections were strongly objected to by the business community, and opposition to them was the cause of the delay in passing the Bill into law. They obviously give the Revenue power to usurp the functions of boards of directors, particularly in the matter of deciding what is, or what is not, a proper proportion of the year's profits to place to reserve and depreciation account. An influential committee of business men has just been formed with the object of securing amendment or repeal of the sections.

Section 33.—Aims at the avoidance of Super-tax by selling securities "cum-dividend," and then buying back almost immediately "ex dividend," no transfer duty being paid. The owner takes the income in the form of capital accretion ; in other words he gets more shares or stock without paying out cash for the addition, and hitherto he has not been liable for Super-tax.

Beginning from 6th April, 1928, the seller will be deemed to have received the income which he has sold and it will be assessed to Super-tax if :—

(1) The Super-tax which would have been avoided exceeds 10 per cent. of total Super-tax liability (sub-s. (3)) ; and

(2) The seller fails to satisfy the Revenue Authorities that the sale was exceptional and not systematic, and that he did not avoid Super-tax by this means in any of the three preceding years (sub-s. (4)).

Any individual upon whom notice is served by the Special Commissioners so to do must furnish a statement of his assets not producing income, or not producing income over the whole period for which held.

"Assets" means :—

(1) Fixed-interest securities, not dependent on the earnings of a company (i.e., Government and Municipal issues) ; and

(2) Any other securities, unless :—

(*a*) the holder effected the transactions through a stock exchange in the United Kingdom ; *and*

(*b*) by transfers on which the full 1 per cent. transfer stamp duty has been paid.

It would appear that in some cases it will be profitable to pay the transfer duty, where the dividend sold is a high one, and the individual escapes Super-tax thereon at the highest rates, but it would appear that both these conditions must be present to warrant the sale and re-purchase, since two transfer duties (a sale and a purchase) will be involved, although one only of them falls directly on the same party. What is the position with regard to bearer warrants on which the transfer duty has been compounded ? Has the draughtsman overlooked the point ?

This section may introduce a new annual task for holders of Russian and defaulted American State bonds, and other non-paying "assets."

Section 34.—If more income is received within any year than is attributable thereto, so that the liability to Super-tax is raised thereby by at least 5 per cent., relief is given. For instance, a company might pay a year's dividend on 6th April, 1926, and the next year's dividend on 5th April, 1927—so that two year's income is received within the tax year 1926/27. The section provides that in such a case the income is to be deemed to accrue from day to day, and be apportioned accordingly.

Section 35.—If through purchases "cum dividend," more Super-tax would become payable to the extent of at least 10 per cent., than if the dividends had accrued from day to day, relief can be claimed. But if securities have also been *sold* cum dividend, the income thereon must be set-off against the income received from the purchased securities.

Part III of the Act.

Replacement of Super-tax by Sur-tax.

Sections 38–44.—The general effect of these sections may be briefly summarised as follows :—

(*a*) Beginning with the tax year 1928-29 income will be assessed at a "standard rate," plus an additional rate for persons whose incomes exceed a stated amount. This additional tax is called "Sur-tax," and will be payable as a deferred instalment of Income tax on the 1st January following the close of the tax year.

(*b*) The first payment of Sur-tax will therefore be due on 1st January, 1930, and it will take the place of Super-tax, which will cease to be payable after the year 1928/29.

(*c*) The basis for assessment of both the standard Income-tax and the Sur-tax will be the same, and will be on—

(1) the amount of untaxed income received in the year preceding the year of assessment ; and

(2) the amount of income taxed at source in the year of assessment.

Example :—

A receives £1,000 from his business and from untaxed interest in 1927/28 and £2,000 from taxed dividends in 1928/29.

His assessment to Income-tax and Sur-tax for 1928/29 will be £1,000 + £2,000=£3,000.

The Income-tax will be due on 1st January and 1st July 1929, and the Sur-tax on 1st January 1930 (no Super-tax will be payable).

(*d*) One return only will be necessary (not two or more as now).

Section 45.—With certain exceptions (leave-pay, etc., persons not ordinarily resident here, and weekly manual wage-earners) the assessment for Schedule E tax, is to be based on the amount received (less deductible expenses) in the *previous* year. But persons who have been assessed for 1927/28 on the amount received in the current year may elect to be assessed for 1928/29 on the amount received in 1928/29 if they give notice to their inspector by 30th June, 1929.

This applies not only to salaries but to all perquisites, bonuses, etc. The section carries a stage further the simplification of the law, the aim being to base the assessment of all income not taxed at source on the amount received during the previous year, a policy which will save a very large amount of the work now necessary in dealing with adjustments and re-claims.

British Ships and Foreign Courts.

THE position of an English ship under a foreign judgment was considered recently in *Ellerman Lines Limited* v. *Read and Others*, 165 L.T.J. 122. In November, 1924, one of the plaintiff company's ships had stranded in the Black Sea, and the defendants had entered into an agreement to salve her. This was on the conditions of "no cure—no pay" in the form approved by Lloyds, and, *inter alia*, there were provisos (1) that salvage payments should be settled in London by arbitration; (2) that security for the same should be settled in London; (3) that the defendants should not arrest the ship except in default of security. In March, 1925, the plaintiffs gave the required security in London. The defendants were joint owners of a salvage ship, one of them being also the captain, and having duly succeeded in salving the stranded vessel, they took her for a temporary refit to Constantinople. The next thing that happened was that the captain of the salvage ship brought an action in the Turkish court against the captain of the plaintiff company's ship on the ground that the latter was about to sail, and that no security for the salvage dues had been given. In this action the plaintiff company's ship was arrested, but her captain had no evidence of what had taken place in London. The captain of the salvage ship swore that no security had been given, and in due course he and his co-owners obtained judgment in Turkey for £23,890 the salvage dues. Thereupon the plaintiff company in September, 1925, began the above action in the King's Bench Division, in which they obtained an interim injunction by which the defendants were restrained from enforcing their judgment in Turkey. This was partly nullified, however, by one of the salvage captain's creditors, who levied execution in Constantinople upon the ship, which was thus lost both to her owners and the salvors. The plaintiff company in the English action claimed (1) damages for breach of the salvage agreement also (2) a declaration that the Turkish judgment was invalid, and (3) an injunction against any proceedings upon the Turkish judgment, which the defendants counter-claimed to enforce. Mr. Justice MACKINNON decided that the question of breach of contract was not *res judicata*, as the plaintiff company was not a party to the action in Turkey. The damages recoverable by the plaintiff company did not include the loss of the ship, however, as this did not necessarily flow from the breach. The learned judge further granted a declaration that the plaintiffs were not liable to be sued here upon the Turkish judgment, but held that he could not grant an injunction to restrain the enforcement of the Turkish judgment in any other country. The Court of Appeal (Lord Justice SCRUTTON and Lord Justice ATKIN—as he then was—and Mr. Justice EVE) reversed this judgment, on the ground that while there was no jurisdiction over foreign courts, the English court had power to restrain a British subject from enforcing in a foreign court a judgment fraudulently obtained. As the captain of the salvage steamer was a naturalised British subject, an injunction was therefore granted restraining him from enforcing his judgment obtained in Turkey.

In the *Janera*, 44 T.L.R., 193, the German owners of the s.s. "Masconomo" started an action *in personam* against the Anglo-Egyptian Oilfields Limited, arising out of a collision in Egyptian waters between the two above-named vessels. The Anglo-Egyptian Oilfields had previously sued the German owners in Egypt, where an expert appointed by the court had reported in favour of the "Janera," the British vessel. The German owners thereupon discontinued their cross-action in Egypt, and sued as above in England. The defendants moved to set aside the writ on the grounds that (1) the witnesses were in Egypt; (2) the "Janera" never came to England; (3) the German owners probably had no assets in England; (4) the British owners had already obtained bail in Egypt and could not obtain it again here; (5) that the action in England was unnecessary, and therefore vexatious and oppressive. Mr. Justice HILL decided that under the Supreme Court of Judicature (Consolidation) Act, 1925, s. 41, there was no justification for staying an action properly brought in this country, solely because the people bringing it were defendants in an Egyptian action relating to the same collision. The Mixed Tribunal would be able to award costs thrown away by the abandoned proceedings, and the plaintiffs could not be deprived of their undoubted right to sue in this country.

A Conveyancer's Diary.

IN our last issue we discussed the difficulties raised by the cases of *Re Bridgett & Hayes*, 71 SOL. J., 910; 1927 W.N. 275, and *Re Gibbings*, 71 SOL. J., 911, and the Probate Registrar's Directions issued in consequence of those decisions. To-day we publish in our correspondence columns another letter from the Principal Probate Registry on the same subject, containing new directions. The course to be followed in the future will be as follows:—

Representation as respects Settled Land.

(1) Grants hitherto made in the form "save and except settled land" will henceforth be made in the form "save and except settled land vested in the deceased which was settled previously to his (or her) death and remains settled land notwithstanding his (or her) death."

This new form, as we suggested last week, will help to clear the air; for the grant will show plainly on the face of it what land is excluded.

(2) Land ceasing to be settled land on the deceased's death will be comprised in a general grant. For the purposes of representation the land is not treated as settled land at all.

(3) Grants in the old form "save and except settled land" may be amended to conform to the new form so as to indicate that land settled previously to the death, but ceasing to be settled by the death is not covered thereby.

(4) If a special grant has been made specifically referable and limited to land settled before the death, but ceasing to be settled on such death (that is how we interpret the last three lines of the new Probate Directions), that grant must be revoked before the amendment referred to in (3), *supra*, will be made.

It may be borne in mind, however, that until such revocation a purchaser will be protected under L.P.A., 1925, s. 204; see *Re Bridgett & Hayes, supra*.

The new Directions do not indicate whether or not in future general grants will usually be made with the new form of exception. We suggested (*ante*, p. 116) that they should, in order to avoid the difficulty as to whether or not a special executor is by such grants divested of land remaining settled land in favour of the general representatives.

Surely, however, it is high time that probate rules were made for the purposes of Ad. of E.A., 1925, s. 23?

"Settled Land" held in Undivided Shares: Vesting.

In *Re Dawson*, 1928, W.N. 27, Clauson J., has decided that "settled land" which, immediately before the commencement of the L.P.A., 1925, was held by trustees in trust for persons entitled in undivided shares, by virtue of the 1st Sched. to that Act, Pt. IV, para. 1 (1), remained vested in those trustees upon the statutory trusts.

A difference of opinion had been expressed in these columns as to effect of the vesting provisions in such a case. The view which we have all along taken (see, for example, p. 80, *ante*) is that now upheld by Clauson, J., but a learned correspondent advanced an alternative view (see p. 96, *ante*) and substantiated it with a strong argument. But it seemed to us that on the general run and arrangement of the sub-paragraphs in Pt. IV, para. 1, the subsequent sub-paragraphs should be construed as applicable only to cases not provided for by the preceding sub-paragraphs.

As events had happened and upon the construction of a testator's will adopted by the court the land in *Re Dawson* was, at the commencement of the L.P.A., 1925, held by the surviving trustee in trust for M and E during their joint lives in equal shares, then for the survivor during her life or until marriage, and thereafter for division in equal shares among the testator's children.

It is clear, therefore, that the land was "settled land" under the pre-1926 law (see *Re Ryder and Steadman*, 1927, 2 Ch. 62) and that it was vested "in trustees" (the plural includes the singular: *Re Myhill*, 72 SOL. J. 86) in trust for persons entitled in undivided shares.

It may be observed that the interests of the owners of the undivided shares were not absolute but limited interests; this made no difference; they were interests vested in possession.

Joint Tenants Holding subject to a Family Charge.

An important decision was given by Clauson, J., upon a vendor and purchaser's summons in *Re Gaul and Houlston*, 1928, W.N. 45; the report is by no means clear. The learned judge apparently held that persons who immediately before 1st January, 1926, were joint tenants subject to a family charge cannot make title as trustees for sale holding upon the statutory trusts.

L.P.A., 1925, 1st Sched., Pt. IV, *primâ facie*, applies only where land was at the material time held at law or in equity in undivided shares. Section 36 of the Act, however, in so far as that section applies, extends the operation of Pt. IV to joint tenancies. But "settled land" is excluded from the operation of s. 36, and "settled land" in s. 36 (unlike "settled land" in Pt. IV, para. 1 (2) and (3), of the 1st Sched., see *Re Ryder and Steadman*, 1927, 2 Ch. 62) means "settled land" within the S.L.A., 1925.

Now, by virtue of that Act, ss. 1 (1) (v), 2, the land in question in *Re Gaul and Houlston* became settled land on the 1st January, 1926. It follows, therefore, that it never vested in the joint tenants upon trust for sale, but did vest in them (if not already so vested) by virtue of L.P.A., 1925, 1st Sched., Pt. II, paras. 3, 5 and 6 (*c*), which clearly apply to "settled land" within the S.L.A., 1925.

Primâ facie, therefore, the vendors could not dispose of it without a vesting deed: S.L.A., 1925, s. 13: they certainly could not over-reach the family charge without the aid of such a deed.

Had they agreed to sell subject to the family charge, then, as the vendors come within S.L.A., 1925, s. 20 (1) (ix), they could have made title under the L.P. (Amend.) A., 1926, s. 1 (1).

Landlord and Tenant Notebook.

Landlord and Tenant Act, 1927—Compensation for Improvements.

The Landlord and Tenant Act, 1927, will come into operation on the 25th March, 1928, and among the matters with which landlords and tenants and their legal advisers will have to make themselves familiar are the methods in which the tenant may exercise his right to make improvements under the Act and to make claims for compensation in respect thereof.

It is the object of this present article to give a clear outline of the procedure to be followed and the steps to be taken before the right to make an improvement may be exercised and a claim in respect thereof be successfully maintained at the termination of the tenancy.

The first step is for the tenant to serve on the landlord a notice in writing of his intention to execute the improvement. This notice must be accompanied by a specification and plan showing the proposed improvement or improvements, and the part or parts of the premises that will be affected thereby (s. 3 (1)).

As improvements made before the commencement of the Act, 25th March, 1928, are excluded (s. 2 (1) (*a*)), it will be hardly likely for any work to be begun on any improvement before the 25th June, 1928, since the earliest date on which a notice may be served will be the 25th March, 1928, and the tenant must give the landlord at least three months within which to make up his mind whether or not to serve notice of objection.

Assume now that a landlord has received notice of intention to execute an improvement, what are the lines of action open to him?

In the first place, of course, he may consent to the execution of the improvement, but he would be well advised in that event to get the tenant to agree to a time limit within which the improvements are to be completed (cf. s. 3 (5)).

Secondly, the landlord may consent provisionally; he may, for instance, suggest modifications in the specifications and plans, and then it will be for the tenant to make up his mind whether he will accept the modifications or else treat the counter offer of the landlord as an objection. The parties, of course, may negotiate and eventually come to terms on any points on which they may differ.

Thirdly, the landlord may offer to execute the improvement himself in consideration of a reasonable increase of rent, or of such increase, as failing agreement, may be determined by the tribunal.

Fourthly, the landlord may object, in which event he must serve notice of objection; such notice, it should be observed, must be served on the tenant within three months after the service of the tenant's notice of intention to execute improvements (s. 3 (1)).

Where the landlord has served a notice of objection, it will be for the tenant next to apply to the tribunal to certify that the improvement is a proper one.

We will assume, therefore, that either the landlord has consented or that the tribunal has certified the improvement as a proper one, so that the tenant is now at liberty to proceed with the execution of the improvement. In executing the improvement, the tenant must be careful to do so according to the specifications and plans, and also according to any conditions, which the tribunal may have imposed (s. 3 (1)), and he must also execute the improvement within the time imit agreed upon between him and the landlord, or fixed by the tribunal.

Having duly completed the improvement, the next step for the tenant to take is to apply to his landlord for a certificate of due execution of the improvement, and if the landlord refuses to give such a certificate the tenant may apply to the tribunal to grant him a certificate to that effect (s. 3 (6)).

This may be regarded as the first stage of the proceedings, the second stage beginning when the tenant is about to leave the premises. If the tenant wishes to claim compensation in respect of the improvements executed by him in this manner, he must in every case make a claim for the purpose on his landlord. This claim can only be made within a definite time limit, viz., in the case of a tenancy terminated by notice within one month after the notice was served on or by the tenant, and in any other case not more than thirty-six, nor less than twelve months, before the termination of the tenancy (s. 1 (1) (*a*), (*h*)).

The tenant will then be in a position to enforce his rights to the recovery of compensation, to which however he will only be entitled on the termination of his tenancy and on quitting his holding (s. 1 (1)).

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

Our County Court Letter.

DEFECTIVE CELLAR FLAPS.

LIABILITY for the above is affected by slight variations in the facts of particular cases. In the recent unreported case of *Edwards* v. *Mitchells and Butlers Limited*, a brewery company was held liable for damages for personal injuries in the following circumstances: The plaintiff was walking along a footpath at 10.15 p.m. when the heel of her right shoe caught in a trap door projecting above the pavement level. She fell, sustained shock and bruises, and (although sent home from hospital the same night) she was in bed for one week and was attended by the doctor for three weeks. The plaintiff was therefore unable to look after the house, and the grocery business carried on at the house was closed while she was in bed. Evidence was given by other witnesses that owing to the depression in the brickwork they also had fallen at the same spot. The defendant company contended that the trap door was up to the required standard, and was not dangerous. Their surveyor stated that the projection nowhere exceeded three-sixteenths to one-quarter of an inch above the pavement level. The hinges were flush with the footpath and the flap was an excellent fit. An architect who had prepared an independent report said that he was unable to fall over the trap door after honestly attempting to do so. His Honour Judge Dyer, K.C., after a view, held that the flap was something which ought not to exist on the footpath. He therefore awarded the plaintiff £35 damages for negligence and nuisance.

The above case followed *White* v. *Hindley Board of Health*, L.R. 10, Q.B. 219, in which Mr. Justice Blackburn stated that, in the case of a trap door opening from the highway into a cellar, the owner of the cellar would be under a liability to keep it so as not to be a nuisance; and a person injured from its being out of repair would have a right of action against the owner.

In many suburban streets, however, the shops were once the front rooms of houses, and half the footpath, being once the front garden, is still no part of the highway. A passer-by who thus falls over a cellar flap on private property is therefore less likely to recover damages. In *Fisher* v. *Prowse*, 1862, 2 B. & S. 770, the defendant was the occupier of a house with a cellar, the flap of which projected above the footpath. The plaintiff was injured through falling over the flap while walking along the street at night. He failed to recover damages, however, as it was proved that the flap existed before the highway was dedicated to the public. Mr. Justice Blackburn stated that if, after a highway exists, anything be newly made so near as to be dangerous—this will be unlawful and a nuisance. It must, however, be something such as an excavation. The question is whether an existing erection or excavation becomes unlawful when its site is dedicated to the public as a highway, or whether the dedication must be taken to be made to the public subject to the inconvenience or risk arising from the existing state. He held that the latter is the correct view of the law.

Difficulties may also arise as to the right person to sue, as in *Pretty and wife* v. *Bickmore*, L.R. 8, C.P. 401. The defendant owned a house in St. John's Wood, which he had leased to one Kay for twenty-one years, the lessee covenanting to keep the premises in repair. There was a coal cellar under the footpath, and the iron flap was at the date of the lease so out of repair as to be dangerous. The defendant's workmen were in fact putting it right when the female plaintiff was injured, but the tenant had already entered and paid rent. The Court of Common Pleas held that as the lease cast the obligation to repair upon the tenant, the defendant as landlord was not liable. There was no obligation on the lessor to repair the coal-shoot, and the lessee would have no remedy over against him.

The Towns Police Clauses Act, 1847, s. 28, imposes a penalty on every person who leaves any vault or cellar defectively covered, but it was decided in *Phillips* v. *Britannia Laundry Ltd.*, 1923, 2 K.B. 832, that a breach of a statutory duty does not by itself give a civil remedy.

Practice Notes.

INCOME TAX.

ALL forms for claims to repayment of income tax provide for authority to be given by the claimant for the refund to be made to an agent. In the normal course of things the revenue authorities show a distinct reluctance to give effect to these authorities, and a list is kept of persons to whom repayments of tax are permitted. If the name of the agent authorised does not appear in this list, some delay is frequently caused while the officials are making judicious inquiries. In the case of solicitors, however, repayment is invariably made when the authority is completed by the claimant, whether or not their names appear on the list as having received repayment on behalf of clients before.

A point which frequently escapes notice is that, although there is no provision in the Acts empowering the revenue authorities to make allowances in respect of rent which is irrecoverably lost, concessional relief is granted in such cases. It is necessary to prove, however, that the tenant has actually ceased to occupy the property, and that every reasonable step has been taken to recover the arrears of rent.

It is seldom realised that solicitors have any very extensive power in the administration of the Income Tax Acts, but a large proportion of the clerks to Commissioners of Taxes are solicitors, and it is their duty to advise the appeal Commissioners and also the Additional Commissioners who make most of the assessments. Their positions as legal advisers and secretaries to the Commissioners are among the most important in the administration of the law relating to income tax, and this is especially the case where the Commissioners have little or no knowledge of their duties. The Royal Commission on the Income Tax was anxious in no way to disturb the existing arrangement, and recognised the necessity for an entirely independent tribunal with separate legal advice in connexion with any proper system of appeals. It is interesting to observe that one of the recommendations of the Royal Commission was that all future appointments of the office of clerk to Commissioners of Taxes should be made from the ranks of practising barristers or solicitors.

DIVORCE.

IN Poor Persons Divorce cases the expense of tracing the co-respondent is a frequent source of delay. The petitioner may have been separated from his wife for years, and the first news of her adultery may be the fact that she has given birth to a child. If she is living with the father there is no difficulty, but it sometimes happens that the birth is the result of a temporary or casual association. In other cases the adulterer may be unable to marry the respondent if she should be divorced, or the respondent may be desirous of shielding the adulterer. For any of these reasons the respondent may have no interest in disclosing the required particulars, or she may definitely refuse to supply them. She may also adopt the middle course, and send a reply to the effect that now she has her baby that is all she cares about, but as far as she knows the man's name was X Y and he lived at M N. The petitioner's difficulty then is that he cannot allege adultery with a man unknown, and obtain leave to dispense with a co-respondent. The petitioner may be quite prepared to swear an affidavit in support of such a petition, on the casuistical ground that as he is not personally acquainted with X Y, the latter is therefore "a man unknown to the petitioner." The dangers of adopting this course are obvious, but efforts to trace and identify the proposed co-respondent may be unsuccessful. There may also be strong grounds for the belief that the respondent has supplied a bogus name and address of the adulterer. Nevertheless, there appears to be no option but to cite as co-respondent the person whose name has been furnished, and to put a process server to the trouble of trying to find him. On failure to effect personal service, an application should be made for substituted service by advertisement in newspapers.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Undivided Shares—Entirety vested in Trustees.

Q. 1148. A testator by his will dated in 1914 appointed his three sons executors and trustees thereof and devised and bequeathed his real and residuary personal estate unto such trustees, to divide the same in equal shares between them, but the share of one of them was to be held by them upon trust to pay the income thereof to him during his life and upon the trusts therein mentioned. The testator died in 1916 and the will was proved about two months later by all the sons. One of the sons (not the one whose share was settled) died in 1923. The two surviving sons now purport to sell some leaseholds formerly belonging to the testator as trustees for sale pursuant to L.P.A., 1925, and ss. 35, 39 and 1st Sched., Pt. IV, para. 1 (1), but we doubt at present whether they are within para. 1 (i) (*b*), as it may well be that the three sons (and the personal representative of the deceased son, assuming a personal representative to have been appointed) have been in receipt of the rents and profits since the testator's decease. We at first thought that the title was vested in the Public Trustee, but perhaps the fact that the property is by the will given to the trustees (and not direct to the beneficiaries) obviates that conclusion. What requisitions ought we to make as to the point? The abstract of title delivered by the vendors' solicitors does not show anything later than the proof of the testator's will and the mere fact that one of the sons died on the 3rd January, 1923. We notice that 1 Wolst. and Cherry (p. 506) says that property became vested on 1st January, 1926, in the Public Trustee where some shares had been settled and others had not, but perhaps, if the property in the present case was on 1st January, 1926, and still is, vested in the surviving trustees of the will (although they were not expressed to be trustees for sale), this may not apply.

A. The requisition should be framed to ascertain whether the two surviving sons held as trustees or the two sons and the personal representative or next-of-kin of the deceased son held as beneficial owners in undivided shares, immediately before 1st January, 1926. If the sons held as trustees, L.P.A., 1925, 1st Sched., Pt. IV, para. 1 (1) (*b*), applied and they now hold upon the statutory trusts. If the sons and the successor of the deceased son were in possession as beneficial owners, the property is now vested in the Public Trustee (para. 1 (4)) and new trustees have to be appointed to replace him. But it seems that in the absence of a conveyance from the trustees to the beneficiaries, the trust must be taken to have been subsisting immediately before 1st January, 1926.

Bankrupt—Death after Adjudication—Funeral Expenses.

Q. 1149. In the administration in bankruptcy of the estate of a person dying insolvent it is provided under s. 130 (6) that funeral and testamentary expenses shall be deemed a preferential debt. Assuming, however, a debtor is adjudicated bankrupt and his property has become vested in the trustee and the bankrupt then dies, are the funeral expenses preferential or not? It does not appear so under s. 33 of the Bankruptcy Act, 1914. Has s. 112 any bearing upon the matter? If not, must the bankrupt be buried as a pauper?

A. The strict answer to the above question must be that a bankrupt's funeral expenses are not chargeable to the creditors after adjudication. Possibly it may be deemed that relatives rather than creditors should come forward. In practice it seems very unlikely that in an ordinary case creditors would not allow reasonable funeral expenses, either by the machinery of the Bankruptcy Act, 1914, s. 58 (see r. 370, Bankruptcy Rules, 1915), or otherwise. In the case of a Mr. Offley, £600 was allowed against creditors for funeral expenses, see note to *Shelley's Case*, 1693, 1 Salk. 296. A modern trustee in bankruptcy, however, could hardly be expected to follow this precedent.

Vendor and Purchaser—Rescission.

Q. 1150. A, B, C and D were appointed trustees of a will. A and B proved, C and D renounced, but did not disclaim the trusts. A has now died, and B, C and D have contracted to sell a leasehold property to E. On behalf of E it is contended that there is now only one trustee, namely B, and that he must appoint at least one other to receive the purchase money. C and D, although they renounced probate, did not disclaim the trusts, and have actively interfered in the trusts ever since their testator's death. The testator's investments were all invested in the names of the four trustees, and their only reason for renouncing probate was because of their absence on military service during the war, and the inconvenience of sending documents into the war area. The trustees contend that there are three trustees still alive, and that there is no necessity to appoint a fresh one. The purchaser persists in his requisition, and the vendors have now served notice of rescission under cl. 10 of the General Conditions of 1925. The purchaser contends that the vendor is not entitled to do this, and has issued a vendor and purchaser summons. Were the vendors entitled to serve such notice of rescission?

A. Possibly the purchaser has based his requisition on the observations of Jessel, M.R., in *Re Gordon*, 1877, 6 C.D. 531, but the above case is clearly distinguishable from that authority, in that C and D have acted in the trust. The requisition, therefore, on the above materials, appears to be unreasonable, and the notice of rescission justified.

Settled Land—Execution of Vesting Deed—Costs—Raising of Money.

Q. 1151. Immediately before 1st January, 1926, a freehold house was vested in trustees upon trust for A for life with remainders over. There is no personalty in the settlement. A has called upon the trustees to execute a principal vesting deed in accordance with S.L.A., 1925, 2nd Sched., para. 1 (2), but the trustees are at a loss to know how the costs of the vesting deed are to be raised. Sub-paragraph (2) says that the deed must be executed at the cost of the trust estate, but here the trust estate consists only of the house. The purposes for which money can be raised by mortgage in S.L.A., 1925, s. 71, do not include the costs of a principal vesting deed, and it seems ridiculous to suggest that the house or part of it must be sold and converted into personalty for this purpose. It is of course arguable that S.L.A., 1925, s. 13, as amended by the L.P.A. (Amend.), 1926, does not make a vesting deed necessary until some conveyance of the settled land is about to take place, the actual vesting having been effected by L.P.A., 1925, 1st Sched., Pt. II. The cost of such deed could then be paid out of the purchase money. Similarly perhaps, in the case of a mortgage under s. 71, the amount to be raised might be increased so as to include the cost of the vesting deed on the authority of sub-s. (1) (ix) of that section, as being part of the costs of the mortgage. But the second schedule says: "As soon as practicable after the commencement of this Act the trustees . . . may and *on the request of the tenant for life . . . shall* . . . execute

a principal vesting deed," and this the tenant for life has now requested them to do. What should the trustees do as to raising costs in this case ?

A. The costs of a vesting deed are trustees' costs. Hence the trustees will have a lien on the property ; see " Godefroy," 5th ed., p. 709. Money can be raised for discharging an incumbrance under S.L.A., 1925, s. 71 (1) (i).

Solicitor—Costs—Preparation of Lease—Lessee's Liability.

Q. 1152. A recently leased a farm and lands to B for a term of six years at a rental of £110. Acting for the lessor we prepared the lease and counterpart, and the lessee B called for a draft of the lease and took it away with him to approve. B did not employ an independent solicitor. There is no clause in the lease providing for the lessor and lessee to pay their own expenses. We therefore presume that it is the lessee's duty and obligation to pay our charges for acting for the lessor. The lessee signed the lease and counterpart at our offices, the document was not sent to an independent solicitor. Accordingly, we sent in a bill some time to the lessee for £10 6s. 8d., plus £1 15s. stamp duty on the lease and counterpart. As far as we can see by the Solicitors' Remuneration Conveyancing Costs we are entitled to charge £10 6s. 8d., the lessors' costs, plus the stamp duty. The lessee has so far ignored the bill we sent him, and we have written him on many occasions. Are we entitled to charge £10 6s. 8d. costs and stamp duty ; if not, could you inform us as to the costs we are entitled to charge ?

2. Can our firm sue him in the firm's name for costs ?

3. Or must we join the lessor with our firm as there appears to be different opinions on this point.

4. Or is it necessary for the lessor to pay us and then for the lessor to sue for the costs ?

A. (1) It may be doubtful whether the lessee is chargeable for more than scale fee, £7 10s., the extra third £2 10s., total £10, and stamp duty, and the cost of the counterpart must be deducted, see *Re Negus*, 1895, 1 Ch. 73.

(2) In the circumstances probably not, for the lessee personally perused the draft on his own behalf, see *Baker* v. *Merryweather*, 1849, 2 C. and K. 737 ; *Smith* v. *Clegg*, 1858, 27 L.J. Ex. 300 ; *Re Ipstone Park Colliery*, 1870, 18 W.R. 285 ; and cases 906-7 " Law Practice and Usage."

(3) and (4) The lessor should pay and sue the lessee.

Will—Charge of Annuity on Land—Whether Settled Land—Title.

Q. 1153. A by his will gave to his wife B " the sum of twenty shillings per week for life, the said sum to be paid regularly by my executors on the Monday of each week out of the rents of my various properties, . . . Should any further profits accrue on my properties after my wife's allowance has been paid the said amount shall be equally divided once every three months between my three children hereinbefore mentioned. After my wife's decease my executors shall dispose of all property of every description pertaining to my estate in the manner they think best. The proceeds of such sales to be equally divided between my three children hereinbefore mentioned." X and C (one of the testator's sons) were appointed executors, but not trustees. There is no devise of the property to the executors on the said trusts or otherwise. A died in 1920, B died in 1927, and the three children of the testator are still living. No representation to the widow has been obtained. Assuming the executors applied the income from the properties according to the will from a date prior to 1st January, 1926, and from this assent to the gifts in the will followed, how should title be made on a sale now of one of the freehold properties forming part of the testator's estate ?

A. This case appears covered, *quâ* the transitional provisions in the L.P.A., 1925, 1st Sched., Pt. IV, by *Re Ryder and Steedman*, 1927, 2 Ch. 62, and the land is not settled land. Accordingly, the legal estate being vested in the executors by virtue of their duties (*Davies to Jones and Evans*, 1883, 24 C.D. 190), it falls under para. 1 (1), and the executors can make title as trustees for sale.

Will—Legacies—Whether Free from Duty.

Q. 1154. By her will A gave certain legacies to B and C and furniture to B, no mention being made that they were free of duty. In the residuary devise she gave all her property to her trustee upon trust to sell and convert into money subject to the payment of the legacies, and all her just debts, funeral and testamentary expenses, and all estate, legacy and other duties to pay the proceeds of such sale and conversion to, etc. The legatees contend that the words " all estate, legacy and other duties " in the residuary devise free the legacies and the bequest of furniture of legacy duty. Would you give your views on this point, together with authorities ?

A. The above case is hardly covered by any authority, the usual form of residuary gift if legacies are freed from duty being " subject to the legacy duty on legacies given free of duty." The general principles are stated in *Re Wedgwood*, 1921, 1 Ch. 601, and perhaps *Re Townend*, 1914, W.N. 145, may be regarded in point. On the above will it is arguable that the reference to legacy duties would be superfluous if the residuary legatees were not burdened with the duty on all legacies, because they would have to bear that on their own in any event. The same argument, however, would apply to the just debts, etc., which the executors would undoubtedly have to pay before ascertaining and distributing residue, whether the testatrix directed them to do so or otherwise. Here there is no direct gift of legacy duty to the legatees, in the absence of which Eve, J., held in *Re Townend*, *supra*, that " full payment and satisfaction " of a legacy meant subject to duty. The opinion is therefore given that, on the extracts above, the contention of the residuary legatees prevails. The matter, however, cannot be regarded as entirely free from doubt, and if the beneficiaries cannot come to some agreement an originating summons may be justified.

Undivided Shares—Entirety Vested in One Person—Undivided Shares Mortgaged—Vesting.

Q. 1155. A.B., who died in 1926, was, at the date of his death and immediately before 1st January, 1925, the absolute owner of the entirety of a freehold property, subject nevertheless to certain incumbrances on undivided shares of such freehold property (with other property) such incumbrances being in favour of different mortgagees. These incumbrances were created by the then owners of undivided shares prior to such undivided shares being acquired by A.B., and were existing at the date of the coming into force of the L.P.A., 1925, and are still existing. Such freehold property is now being sold, and it is contended that, in consequence of the mortgages being to different persons on undivided shares, the property is now subject to the provisions relating to land held in undivided shares as set out in L.P.A., 1925, 1st Sched., Pt. IV, and that the property has vested in the Public Trustee, and that new trustees should be appointed in pursuance of sub-para. (4). On the other hand, it is argued that A.B. being at the date of the Act entitled " absolutely and beneficially " to *the entirety* of the property, no question as to undivided shares now arises, and that the personal representatives of A.B. can make a good title to the entirety of the property ; the various incumbrancers joining in the conveyance to release the property from their claims. It is to be noted that the incumbrances referred to cannot be receipted and the receipts dated *prior* to the conveyance to the purchaser as they include other property and the mortgagees will not be fully paid off ?

A. The opinion here given is that the case falls within Pt. IV, para. 1 (4), and that the land is now vested in the Public Trustee upon the statutory trusts. The case might have been provided for in Pt. VII, the entirety being left in

A.B. and the incumbrancers being made joint mortgagees of the entirety; but there is no such provision, and so Pt. IV applies. A.B. can, with the consent of the mortgagees, appoint trustees to replace the Public Trustee, and they, when appointed, can make title.

"Building Club"—Title of Member.

Q. 1156. J was one of twelve members of a club formed in 1908 to build or acquire a block of twelve freehold cottages (one for each member). The bulk of the cost of the land and buildings was obtained from various private lenders on mortgage of the property, the balance being obtained by the trustees from a local bank presumably on their personal guarantees. Each member was allotted a particular house and in 1910 after certain subscriptions had been paid a conveyance was executed to each member who at the same time executed (1) a first mortgage on his house to an outside lender, and (2) a second mortgage in favour of the trustees of the club for securing payment of the members' subscriptions, or in other words the balance of the cost of the house. The members were not let into possession of their houses; the trustees by their secretary continued to receive the rents, the balance thereof, after payment of the interest on the first mortgage being applied along with the subscriptions received from the members in reduction of the trustees' indebtedness to the bank. J died in 1915, leaving a will appointing his wife A executrix, and giving her: "Everything I may be possessed of or entitled to at my decease," and giving her "power to make a will dividing the property between my daughter E and son R as she may think best." A duly proved the will. On J's death the daughter's name (E) was substituted for that of J in the books of the club. This was done presumably by the direction of A, though there is no evidence of this, and the secretary of the club who kept the books is dead. It must, however, have been within the knowledge of R, as he was one of the trustees of the club and moreover acted as solicitor to the club. No conveyance to E of the equity of redemption in the property was, however, executed, and E never paid any subscriptions to the club, in fact from about that date all the members ceased to subscribe. A died in 1917 leaving a will appointing her son R and her daughter E executors, and giving the residue of her estate equally between them. R alone proved, E having renounced. R died intestate in 1926 and letters of administration have been granted to his widow L and son G. In 1927 the trustees, having cleared their indebtedness to the bank, decided to wind up the club and let the members into possession of the particular houses allotted to them. J's house was No. 5, and E has taken possession. The second mortgage has been duly discharged by the club trustees by a receipt in the statutory form, payment of the mortgage money being expressed to have been made by E. E is now desirous of paying off the first mortgage and selling her house, and the question arises how she is to make title. Will you favour me with your views? It may be mentioned that R's administrators are willing to assist in any way.

A. J acquired a full title to the house by the conveyance of 1920, subject only to the first and second mortgages, the second mortgagees taking possession according to their right. J's will appears to have been ambiguous, but whether his widow took an absolute or life interest, her substitution of her daughter's name for that of the father as a member of the club may be regarded as an act of bounty or attempted act of bounty by the mother. It certainly could not pass the equity of redemption of the house, nor, without much stronger indications, operate as a declaration of trust. However, the matter is simplified by the fact that, on the title shown, the fee is in E and R's administrators, and the latter acquiesce in E's claim. A simple plan therefore, would be for R's administrators to convey their interest to E on the recital that, on the distribution of the estate of J and A, it had been agreed between E and R or his administrators that the house should be appropriated to E.

Income Tax—Accumulation directed by Testator—Exemption from Tax—Extent of.

Q. 1157. Referring to the answer to *Q.* 1019, p. 862, *ante*, the inspector of taxes, on being informed that the beneficiaries intended to claim repayment of tax on the accumulated income under the six years' limit under s. 41 as extended by the F.A., 1923, s. 30 (1), as advised they could do in your answer, replies that the beneficiaries cannot be said to have had an absolute interest in the income of the trust prior to 1st January, 1927, and no repayment can be made. The wording of the trust is as follows: "I direct my trustees to accumulate the income of my residuary estate from the date of my death until the 1st of January, 1927, and at the end of that period to divide the said estate as therein mentioned amongst the children and grandchildren of the testator, and I direct that the said shares of my grandchildren shall not be paid over to them until twenty-five years of age, but that the same shall become absolutely vested in each of them on attaining twenty-one years of age or as to females marrying under that age." The inspector has had the will produced to him, and his further contention is that, whether or not any of the beneficiaries attained the age of twenty-one or in case of females married under that age, they had no interest contingent or absolute in the income of the trust until 1st January, 1927. It is submitted they had an absolute interest on attaining twenty-one, and in fact—as they have attained twenty-five—they have been paid their shares with the accumulated interest on 1st January, 1927, and they are entitled to repayment of the tax on the accumulated interest, from the date they attained twenty-one until payment. Your further opinion hereon is desired.

A. A short answer to the income-tax collector (who *primâ facie* would not be an authority on the construction of wills, but possibly he is acting under legal advice) is that deduction at the source is deduction in respect of some person's beneficial enjoyment of income, and if no person is entitled to such income, income tax is not payable. The inspector's construction would presumably vest the income in the next of kin as undisposed of by the will, but there is no warrant for it, for a gift of capital carries accumulations of income, see *re Buckley's Trusts*, 1883, 22 C.D. 583; and *Dale* v. *Metcalfe*, 1927, 2 K.B. 491; affirmed, C.A. Oct. 28th, 1927, among many authorities. The answer to *Q.* 1019, *supra*, is therefore confirmed.

Easement—Right to construct and maintain Water Main—How far Registrable.

Q. 1158. A.B., by deed of grant made in November, 1927, grants unto the rural district council, as grantees in fee simple, the right to construct and maintain a water main through the lands of the grantor, together with the right of the grantees to enter upon the said lands for renewal and maintenance of the water main. The water main is to supply water to certain premises in the area of the council, the owners of the said premises agreeing to repay the council the cost of same. The council carry out the work under their powers under the P.H.A., 1875. Is this deed a valid grant under the L.P. Acts, and will it require to be registered in the Local Deeds Registry of the North Riding of Yorkshire, or any other register as a land charge or otherwise? If the grant had been made direct to the owners of the premises, who receive the benefit of the easement, would the effect and registration be the same as the grant to the council?

A. An easement in fee is a legal interest under the L.P.A., 1925, s. 1 (2) (*a*), and a grant of it does not require registration as a land charge under the L.C.A., 1925. The deed in question, however, would no doubt be deemed an "assurance" within the Yorkshire Registries Act, 1884, s. 4, and creates a right which by s. 1 (2) (*a*), *supra*, and s. 1 (4) is equivalent to a legal estate, so is registrable in Yorkshire notwithstanding s. 11 (1). The right to maintain is an ancillary easement, see *Pomfret* v. *Ricroft*, 1669, 1 Saund. 321.

Correspondence.

Libel on Solicitors.

Sir,—On page 92 of your issue of 11th February last, you refer (in a paragraph headed, "Libel on Solicitors") to the case of *Lawrence* v. *Hall (and Another)*, the other being the Working Men's Club and Institute *Union*.

Your paragraph, if with all respect I may suggest, does not completely appreciate the facts. I, the undersigned, was the defendant. I am not and was not "the Secretary of the *Club*" as you state.

I am the Secretary of a *Union* of Clubs, whose business (that the Union, and of myself, delegated by it) was to give advice to clubs which are members of the Union, or which are seeking membership of it. It was in this capacity that I wrote the words complained of, i.e., in the course of my duty so to do on behalf of the *Union* and its obligations to the *Club*.

It was precisely, and only, because I wrote what I did as a matter of my duty in the circumstances that the learned judge ruled privilege.

I think you will agree that, in such circumstances, there are numerous authorities which the judge's ruling followed. Further, it may be added, as perhaps affecting the issue that my note was not written to the Club concerned, but to another officer of the Union for his guidance in advising the Club, which had sought my advice through him, and that this recital somewhat affects the view of the case which is portrayed in your paragraph.

B. T. Hall, *Secretary*.

The Working Men's Club & Institute Union, Limited,
Clerkenwell Road.
14th February.

[Mr. Hall's letter *does* make the position clearer.—Ed., *Sol. J.*]

"Limitation of Liability."

Sir,—With all respect I suggest that there is an obvious error in the article headed "Limitation of Liability," on p. 94 of your issue of 11th inst., in the paragraph commencing at the bottom of the left-hand column with the words "Again take a cargo vessel, etc." The liability of the owners of the ship in default of £8 per ton would not be based in such a case on the tonnage of the vessel sunk by her, but on the tonnage of their own vessel, which in the case stated might be any number of tons up to, say 50,000 or more, that is the tonnage of some of the largest vessels afloat, and the limitation therefore of the defaulter might be far beyond £48,000. Moreover this limitation of liability as to the sunk vessel and cargo is not affected by the fact that loss of life or personal injury has or has not been sustained at the same time, although the contrary would appear to be the case from the paragraph in question. The tonnage of the "sunk vessel" mentioned would, I suggest, only be a matter for consideration for limitation of liability as well as the tonnage of the other if the court should hold that the damage arose through the fault of each vessel and in the result directed that the total damages as assessed should be shared between the owners of the two vessels, each paying the half of the other's damage in effect. But that position does not arise on the facts as stated in the paragraph in question. Although only a gloss on the procedure named I suggest that it is a matter of comment and regret that this principle of contribution by each to the other owner of two negligently navigated ships in collision has not been extended in our legal system to other cases of contributory negligence, e.g., in collisions between motor vehicles. The fairness of such an arrangement seems to have prompted insurers of motor vehicles against third party risks to adopt by agreement *inter se* a very similar course of procedure. I have also been told that it has a part in the legal systems of other countries with satisfactory results.

London, E.C.4. Percy Clarke.
16th February.

[We thank Mr. Clarke for drawing attention to what is an obvious error in the note on "Limitation of Liability" which appeared in the issue of the 11th inst., at p. 94. By the inadvertent omission of the words "of equal tonnage," after the word "fault" (line 4, col. 2) a hypothetical illustration made the limitation to which the defaulting ship was entitled dependent upon the tonnage of the innocent ship. The paragraph in question should have read: "Again, take a cargo vessel of 6,000 tons gross, carrying, in addition to a very valuable general cargo, a quantity of bullion, so that the actual value of her cargo alone might be anything over £100,000; the owners of a vessel in fault *of equal tonnage* which sunk her with or without loss of life or personal injury, could, provided the loss was without their fault or privity, claim to limit their liability under the Act to £48,000."—Your Contributor.]

The New Conveyancing.

Sir,—I have noticed the letter in your issue of Saturday last from Messrs. Burley & Geach and your note suggesting that in the case they mentioned the two sons of the settlor might obtain administration in respect of the trust estate only.

It is clear that the two sons cannot get a grant at all in respect of the tenant for life's estate of any kind as they are no relation to the tenant for life in whom as you have constantly pointed out the legal estate in the land which was previously settled was vested at her death.

Is not the cheapest and safest course to proceed on the lines of a case which came before Mr. Justice Hill in March, 1927, *Re C. M. Jones, deceased*, namely, that a letter should be written to the Treasury Solicitor asking him if he will decline to interfere in the estate of the intestate tenant for life, which will no doubt result in a letter from him that he does not intend to interfere, and then to move the court on motion for a grant to go direct to the devisees (not exceeding four of them) of the real estate under the settlor's will?

I have had occasion to obtain a grant in a similar manner in another case.

London, E.C.2. Reynolds & Miles.
20th February.

[We still think that the proper course to follow is that which we suggested last week. This was the course followed in *Re Dalley*, 70 Sol. J. 839; the only difference between the present case and *Re Dalley* is that in the latter there was one remainderman absolutely entitled.—Ed., *Sol. J.*]

Settled Land.

Sir,—I am directed by the Senior Registrar to inform you that, in order to meet the situation arising in connection with settled land in consequence of the decision *In re Bridgett and Hayes' Contract*, the Registrars of the Principal Probate Registry have decided that in all future grants "save and except settled land," the formula to be used shall be "save and except settled land vested in the deceased which was settled previously to h— death, and remains settled land notwithstanding h— death."

Where all the land vested in the deceased ceased to be settled land on his (or her) death, a general grant will issue.

Where a grant save and except settled land has issued in the form used prior to this decision, and it appears by an affidavit of the grantees that there was settled land vested in the deceased which ceased to be settled land on the death of the deceased, the grant may be amended by substituting the

formula given in para. 1, provided that no grant limited to that settled land is in existence. If such grant has been made, it must first be revoked.

I am, Sir,
Your obedient Servant,
C. T. A. WILKINSON,
Establishment Officer.

Principal Probate Registry,
Somerset House,
London, W.C.2.
2nd February.

[The contents of this letter are discussed in "A Conveyancer's Diary," on p. 129, *ante*.—ED., *Sol. J.*]

Justices' Decision by Ballot.

Sir,—At a recent Brewster Sessions the justices—some fifteen in number—retired to consider their decision. A suggestion was then made that it was undesirable for it to be known how certain of the justices had decided to deal with the matter, and, therefore, there should be a vote by ballot; and despite the protests of several of the justices this ballot was taken. I should like to have your views on this method of procedure. In my judgment it is irregular, and might lead to abuse if persisted in, inasmuch as there is no provision for ballot boxes and scrutineers on such occasions. I consider, moreover, that the parties to an application before the justices should be and are entitled to know how the magistrates personally view their applications, and that in these matters the magistrates themselves are, in fact, judges, and I know of no court where judges give their decision by ballot.

36, Bedford-row, W.C.1. B. EDWARD WHITE.
18th February.

[Though the use of the ballot cannot be approved of, it is doubtful whether it is actually illegal. The decision is to be by majority, and we are unable to agree that the parties have a right to know how that majority is made up. It has to be borne in mind that a licensing justices meeting is not a court: *Boulter* v. *Kent*, 1897, A.C. 509; 66 L.J. Q.B. 797.—ED., *Sol. J.*]

Obituary.

MR. R. O'NEILL PEARSON.

On the 11th inst., Mr. R. O'Neill Pearson, of Ulverston, who was admitted in 1878, died at the age of seventy-one. He was clerk to the Commissioners of Taxes for Lonsdale North, having succeeded his father nearly forty years ago, and was County Council representative of the Cartmel National Schools. At Ulverston County Court, on the 14th inst., His Honour Judge Gawan Taylor in addressing the court said that since he entered upon his duties fifteen years ago he had been a great friend of Mr. Pearson, who had practised before him until his death. His death was a great loss to that court and the whole district, for Mr. Pearson upheld the highest traditions of his profession, and he would ask Mr. Registrar Hodgson to forward a letter of sympathy to the relatives.

Mr. F. W. Poole, representing the solicitors practising in that court, expressed their deep sorrow at the death of Mr. Pearson, who he said was always scrupulously fair. In his opinion the profession and public had lost a great friend.

Mr. Registrar Hodgson said that he felt very deeply the loss of Mr. Pearson, who had always been very kind to him, and would be greatly missed.

MR. T. W. BISCHOFF.

Mr. Thomas William Bischoff, solicitor, who until recently was senior partner in the well-known firm of Messrs. Bischoff, Coxe, Bischoff & Thompson, of 4, Great Winchester-street, E.C.2, died on Wednesday, the 8th inst., at the age of eighty-two. Mr. Bischoff who was admitted in 1868, led a distinguished professional life, and was for many years a member of the Council of The Law Society, and also of the Discipline Committee.

Books Received.

A Guide to the Landlord and Tenant Act, 1927. H. A. HILL, B.A. (Oxon), and A. E. PHELPS, of Gray's Inn, Barristers-at-Law. Large crown 8vo. pp. xxix and 108 (with Index). 1928. The Solicitors' Law Stationery Society, Ltd., London, Liverpool and Glasgow. 7s. 6d. net.

Manual of Trust Law. A. H. COSWAY. Large crown 8vo. pp. xii and 166 (with Index). The Solicitors' Law Stationery Society, Ltd., London, Liverpool and Glasgow. 7s. 6d. net.

The Landlord and Tenant Act, 1927. With Introduction and Notes. ARCHIBALD SAFFORD. Large Crown 8vo. pp. xii and 116 (with Index). 1928. Hadden, Best & Co., Ltd., 5, West Harding-street, and 26, Fetter-lane, E.C.4. 6s. net.

The Landlord and Tenant Act, 1927. With Introduction and Notes. J. C. ARNOLD, Barrister-at-Law. Medium 8vo. pp. x and 114. 1928. Butterworth & Co. (Publishers), Ltd., Bell-yard, Temple Bar. 10s. 6d. net.

Criminal Appeal Cases. HERMAN COHEN. Vol. 20. pp. 137-160. Part 5. Sweet & Maxwell, Ltd. 7s. 6d. net.

The Landlord and Tenant Act, 1927. With full notes and an introductory sketch of the effect of the Act. CECIL R. HAVERS, Barrister-at-law. Cloth boards. Demy 8vo. pp. ix and 134 (with Index). 1928. Geo. Barber, The Furnival Press, Furnival-street and Cursitor-street, E.C.4. 5s. net.

The Landlord and Tenant Act, 1927. With notes, text of the Act and forms. S. P. J. MERLIN, Barrister-at-law. Cloth boards. Demy 8vo. pp. xvi and 156 (with Index). 1928. Waterlow & Sons Ltd., London Wall. 5s. net.

The Landlord and Tenant Act, 1927. By the Editors of "Law Notes." Paper. Demy 8vo. pp. viii and 124 (with Index). 1928. "Law Notes" Publishing Offices, 25/26, Chancery-lane, W.C.2. 5s. net.

The Law of Adoption and Guardianship of Infants. With special reference to Courts of Summary Jurisdiction, together with the Legitimacy Act, 1926. W. CLARKE HALL and JUSTIN CLARKE HALL, B.A. (Oxon). Cloth. Crown 8vo. pp. xiii and 171 (with Index). 1928. Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

Murray and Carter's Guide to Income Tax Practice. Containing a summary of the various enactments relating to Income Tax Practice, etc., for the use of taxpayers. Eleventh Edition. 1928. Cloth boards. Large Crown 8vo. pp. liv and 544 (with Index). Gee & Co. (Publishers) Ltd., Kirby-street. 30s. net.

The Law of Actionable Misrepresentation. Stated in the form of a Code followed by a Commentary and Appendices. GEORGE SPENCER BOWER, K.C. Second Edition. 1927. Cloth boards. Medium 8vo. pp. xli, 454 and (Index) 77 pp. Butterworth & Co., Bell-yard. 30s. net.

A Practical Guide to the Game Laws. CHARLES ROW, Solicitor and Secretary to the East Anglian Game Protection Society. 1928. Second Edition. Cloth boards. Large Crown 8vo. pp. xi and 268 (with Index). Longmans Green & Co., Ltd., 39 Paternoster-row, E.C.4; New York, Toronto, Calcutta, Bombay and Madras. 10s. 6d. net.

Verse and Song. February, 1928. Vol. I. No. 1. Bi-monthly. Arthur H. Stockwell Ltd., 29 Ludgate-hill, E.C.4. 6d. net.

The Public General Acts passed in the Seventeenth and Eighteenth years of the Reign of His Majesty King George V, and the Church Assembly Measures which received the Royal Assent during 1927. Tables of the Titles, the effect of the Legislation and an Index. H.M. Stationery Office. 2s. 6d. net.

The Lawyer and Banker, combining The Southern Bench and Bar Review, Title and Title Men (1915), Chicago. *The Banker and Investor* (1914), New York. *Central Law Journal* (established 1874). A journal for Corporation Lawyers and Title Men. Old Series. Vol. CII. New Series Vol. XXI. No. 1. January-February, 1928. The Lawyers and Bankers' Co., 921/27 Lafayette-street, New Orleans, La. Single copies 75 cents.

The Bombay Law Journal. Vol. V. No. 9. February, 1928. G. M. PANDYA. Bombay 4. Single copy R.1.8.0.

Minnesota Law Review. Journal of State Bar Association. Vol. 12. No. 3. February, 1928. The Minnesota Law Review, Minneapolis. 60 cents per current number.

The Secretary's Manual on the Law and Practice of Joint Stock Companies, with Forms and Precedents. His Honour Judge HAYDON, M.A., K.C., and Sir GILBERT GARNSEY, K.B.E., F.C.A. 1928. Twentieth Edition. Cloth boards. Large Crown 8vo. pp. xxxi and 438 (with Index and Bibliography). Jordan & Sons, Ltd., Company Registration Agents, 116/118 Chancery-lane, W.C.2. 8s. 3d. post free.

Legal Liability for Damage by Floods and Tides. Reprinted from THE SOLICITORS' JOURNAL, 29 Breams-buildings, E.C.4. 7d. post free.

Justice and Administrative Law. A Study of The British Constitution. WILLIAM A. ROBSON, B.Sc. (Econ.) Lond., Barrister-at-law. 1928. Cloth boards. Large Crown 8vo. pp. xviii and 346 (with Index). Macmillan & Co., Ltd., St. Martin's-street, London. 12s. 6d. net.

The English and Empire Digest. With annotations, being a complete Digest of English Cases reported "to the present day." Vol. XXXVII. "Pawns and Pledges" to "Prize Law and Jurisdiction." 1928. Cloth boards. pp. xciv and 690. Butterworth & Co. (Publishers), Ltd., Bell-yard, Temple Bar.

A Digest of Equity. J. A. STRAHAN, M.A., Hon. LL.D., Barrister-at-Law. 1928. Fifth Edition. Cloth Boards. Demy 8vo., pp. lxiii and 687. Butterworth & Co. (Publishers), Ld., Bell-yard, Temple Bar. 22s. 6d. net.

Seventh Report of The Advisory Committee on the Welfare of The Blind to the Minister of Health. 1926-27. Paper. Medium 8vo. 33 pp. H.M. Stationery Office. 6d. net.

Journal of Comparative Legislation and International Law. F. P. WALTON, K.C. (Quebec), LL.D. Third Series. Vol. X, Part I. February, 1928. The Society of Comparative Legislation, 1, Elm-court, Temple, E.C.4. 6s. net.

THE COMPANIES BILL.

AMENDMENTS PROPOSED IN NEW MEASURE.

An explanatory memorandum of seventy-eight pages relating to the amendments proposed in company law in the Companies Bill has now been issued as a White Paper. The amendments proposed by the Bill include:—

The articles of a company must be printed "or typewritten."

Penalties for default under certain sections which in the past applied only to "every director and manager" are extended to "every director, manager, secretary, or other officer." In one section "every liquidator" is included.

Every company must have a registered office within fourteen days of starting business or of its incorporation, whichever is the earlier. New penalties varying from £5 to £50 are attached to many clauses.

NOTES OF CASES.

Privy Council.

(Present: The Lord Chancellor, Lords Haldane, Buckmaster, Darling and Warrington of Clyffe.)

Hirsch *v.* **Protestant Board of School Commissioners of Montreal.** 5th February.

CANADA — QUEBEC — EDUCATION — JEWISH CHILDREN IN PROTESTANT SCHOOLS—APPOINTMENT OF JEWS ON BOARD.

This was an appeal from the Supreme Court of Canada relating to the education of Jewish children in the Province of Quebec. Seven questions were raised of which the most important were (1) was the Statute of Quebec, 1903, 3 Edw. 7, c. 16, *ultra vires;* (2a) Under that statute could persons of Jewish religion be appointed to a Protestant Board of School Commissioners; (6) Could the Provincial legislature pass legislation to establish separate schools for persons who were neither Catholics nor Protestants. The point at issue was whether Jews could serve on religious bodies administering public schools.

The LORD CHANCELLOR said, their Lordships were of opinion that the answers to questions (1) and (2a) should run as follows: "(1) No, except so far as it would enable persons professing the Jewish religion to be appointed to the Protestant Board of School Commissioners in Quebec or Montreal or to any Protestant Board of Examiners," and certain other exceptions, "(2a) On the construction of the statute, yes." As to questions 2b, 3, 4, 5 and 7 it was sufficient to say that they agreed with the answers given by the Supreme Court. As to question 6 they thought it would be possible to frame legislation for establishing separate schools for non-Christians without infringing the rights of the two Christian communities in their denominational schools. The decision of the Supreme Court would therefore, be affirmed with the variations set forth and they would humbly advise His Majesty accordingly.

[COUNSEL: *Sir J. Simon*, K.C., *St. Laurent*, K.C., *Gahan*, K.C. and *Alexander*, K.C.; *G. A. Campbell*, K.C., *Creelman*, K.C. and *Pritt*, K.C.; *Perrault*, K.C., *Lancelot*, K.C., *Horace Douglas* and *Lafleur*, K.C.

SOLICITORS: *Blake & Redden*; *Lawrence Jones & Co.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Schnapper.** Clauson, J. 24th January.

INFANT—LEGACY TO—PAYMENT OUT OF COURT—MAJORITY ACCORDING TO LAW OF DOMICIL.

This was a petition by a petitioner of German nationality, E. B. Schnapper, of Frankfurt-on-Maine, in Prussia, an infant according to the law of England, petitioning by her next friend under the Trustee Act, 1925, for payment out to her of a fund in court representing a legacy of £1,000 bequeathed by the will of S. A. Schnapper, dated 25th January, 1922, to the petitioner, a niece of the testator. The testator died in October, 1922, and in November, 1923, the executors of his will paid the legacy to his niece into court under the provisions of the Trustee Act, 1893, to the credit of an account, "Legacy to Edith Betty Schnapper, an infant (beyond seas) under the will of Siegmund Alfred Schnapper." At the date of the testator's death and at the date of the petition the petitioner was domiciled in Prussia. At the testator's death she was thirteen years of age and attained the age of eighteen years on the 31st October, 1927, and therepon a decree was made by the District Court of Frankfurt-on-Maine declaring the petitioner to be of age. According to the law of Prussia she thereupon became competent to receive the moneys and to take transfers of securities and give valid receipts therefor. For the petitioner it was contended that she was entitled to have the fund out of court, and *In re Hillman's Will*, 1866,

L.R. 2 Eq. 363, was referred to, where executors were held entitled to pay a legacy to a legatee who had attained her majority according to the law of Hamburg, where she was domiciled, and also an Irish case where payment out of court was ordered in similar circumstances: see *Donohoe* v. *Donohoe*, 1887, 19 L.R. Ir. 349.

CLAUSON, J., after stating the facts, said: The funds in court representing the legacy must be sold and the residue of the proceeds, after paying the costs of the application, paid to the petitioner. The order will be as follows: "The court being of opinion that the petitioner is in the position to give a receipt for her legacy notwithstanding that she is under the age of twenty-one years she having attained her majority according to the law of the place of her domicil, that is the law of Prussia, in Germany."

COUNSEL: *G. G. Solomon.*

SOLICITORS: *Adler & Perowne.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Arnold and Weaver *v.* **Amari.**

Sankey, J. 2nd December, 1927; 13th January, 1928.

SOLICITOR—DIVORCE PROCEEDINGS—DECREE FOR HUSBAND—WIFE'S COSTS—CLAIM AGAINST HUSBAND.

In November, 1926, the defendant's wife consulted the plaintiffs, solicitors, with reference to divorce proceedings threatened by her husband. The plaintiffs on the 7th April, 1927, received a copy of a letter from the wife to her husband stating that she did not intend to defend the suit; practically all the costs in the matter had been incurred at that time. In view of all the circumstances of the case, however, the plaintiffs continued the defence, but at the hearing the wife failed to appear, and the husband, the present defendant, obtained a decree. Application was made at the hearing for the wife's costs, but no security having been obtained from the husband for them the court refused to grant them. In this action, brought to recover the costs on the ground that the wife had her husband's authority to incur them,

SANKEY, J., said that in his opinion the plaintiffs honestly believed that the wife was innocent and would be successful in her defence. In those circumstances could she bind her husband to pay her solicitors' costs of divorce proceedings in which a divorce was granted against her? He could see no authority which compelled him to hold that she could so bind him. Judgment for the defendant.

COUNSEL: *P. B. Morle* for the plaintiffs; *Robert Fortune* for the defendant.

SOLICITORS: *Church, Adams, Tatham & Co.*, for *Matthew Arnold & Weaver*, Watford; *Langford, Borrowdale & Thain.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Finlay, J. 7th, 8th February.

Hands *v.* **Simpson Fawcett & Co., Ltd.**

CONTRACT—EMPLOYMENT AS COMMERCIAL TRAVELLER—MOTOR CAR USED—LICENCE SUSPENDED—DISMISSAL BY EMPLOYERS—NON-DISCLOSURE OF MATERIAL FACTS.

The plaintiff in this action, a commercial traveller, claimed damages from the defendants, his employers, for wrongful dismissal and for alleged breach of a written agreement dated the 1st December, 1926, under which he was engaged to sell defendants' goods, toys and perambulators, over the south of England, including London. Upon certain terms contained in the contract the plaintiff was provided with a motor car for use in his business of travelling. The defendants alleged that the plaintiff's concealment of motoring offences for which he was convicted before and during his engagement by them was a concealment of material facts justifying their terminating the contract, since in consequence of his last conviction he was unable to carry out his duties owing to his licence being suspended for three months.

FINLAY, J., said that there was no such obligation here as existed in contracts of insurance to state all the material facts. He was of the opinion that the plaintiff's conviction of motoring offences was not a ground for terminating the contract. During his suspension the plaintiff could have got someone else to drive his car; there was nothing in the case to show that he had put it out of his power to perform his duties. Judgment for the plaintiff for £400, with costs.

COUNSEL: *Sir Walter Schwabe*, K.C., and *Eric Sachs* for the plaintiff; *J. A. Greene*, K.C., and *Wynn Werninck* for the defendants.

SOLICITORS: *H. Burford Judge; McIntyre, Emsley & Co.*, for *Emsley & Son*, Leeds.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.

Smith, Hogg & Co. Limited *v.* **Bamberger & Sons.**

Wright, J. 17th February.

SHIP—DISCHARGE OF TIMBER CARGO—MEANING OF "ALONGSIDE."

The defendants in this action were, as indorsees of bills of lading, the owners of a quantity of timber which was discharged at Surrey Commercial Docks, London, from the plaintiffs' steamship "Fernhill." The bills of lading incorporated the terms of a charter-party which contained, *inter alia*, the following clause: "The cargo to be brought to and taken from alongside the steamer at the charterers' risk and expense as customary." Part of the cargo was discharged on to the quay and part into barges. The plaintiffs pleaded that the defendants did not take the cargo from alongside the steamer, and that they, the plaintiffs, carried the cargo to and stowed it in the usual place in the docks for discharged timber, for which labour they claimed £102 9s. 2d. from the defendants. The defendants denied liability and said that, according to the customs of the port, the shipowners were bound to bear all costs of unloading and stacking the cargo on the quay, and the delivery and stowage in the lighters.

WRIGHT, J., said that, from the authorities, he was of the opinion that under the present class of contract, when the discharge was on to the quay, the cargo was "alongside" when it was available for release from the ship's tackle on the quay, and the obligation of the receiver to take it away arose at that moment. In the case of barges the shipowner had to place the cargo in the barge, the receiver's obligation only began when that had been done. Judgment for the plaintiffs in respect only of the cargo discharged on to the quay.

COUNSEL: *Le Quesne*, K.C., and *Sir Robert Aske*, for the plaintiffs; *Jowitt*, K.C., and *J. Dickinson*, for the defendants.

SOLICITORS: *Botterell & Roche*, for *Botterell, Roche and Temperley*, West Hartlepool; *William A. Crump & Son.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Blanchard *v.* **Blanchard.** Hill, J. 14th February.

DIVORCE PRACTICE—WIFE'S PETITION FOR JUDICIAL SEPARATION—RESPONDENT'S ADULTERY SINCE 1923 ACT—ALLEGED COLLATERAL PURPOSE OF PETITIONER—DISCRETION TO REFUSE DECREE.

At the hearing of this undefended petition for judicial separation, counsel for the respondent husband unsuccessfully contended that there was a discretion in the court in the circumstances to refuse a decree.

HILL, J., in the course of a considered judgment, said: In cases like this I have thought it my duty to inquire why judicial separation and not dissolution is asked for. My reason for so doing is two-fold: (1) That according to law,

judicial separation is not to be decreed when it is sought not for the protection of the wife, but for some wholly collateral purpose; and (2) that I am well aware of evils likely to result when persons bound by the marriage tie are living apart with no real prospect of reconciliation. Following my practice, I asked the petitioner why she sought judicial separation and not divorce. She was quite frank about it, she had no religious objection to divorce. She had no expectation or wish that her husband should return to her. Her reason was this: the other woman had ruined her home, and she did not want her husband to marry the woman. In these circumstances I greatly regret that the law gives me no power to decree dissolution. Parliament has not acted on the recommendation of the Divorce Commission, that the court should have a discretion in these cases. However, the petitioner has been grievously wronged by the respondent, and though she needs no protection against interference by the respondent, yet she wants orders for permanent maintenance and for custody, and this court has no power to make such orders except upon a decree. Maintenance and custody are at any rate, part of the purpose for which the suit is brought. It is not brought wholly for a collateral purpose as in the case I was referred to *Matthews* v. *Matthews*, 3 Sw. and Tr. 161. On the facts of this case, and on the law as it stands, the petitioner, in my opinion, has a right to a decree of judicial separation. The court has a discretion, but not an unlimited discretion. The discretion must be exercised on some legal ground. That in my view is the effect of s. 185 (1) and (2) of the Judicature (Consolidation) Act, 1925. It is true that the word used in that section is "may," whereas in s. 178, which relates to dissolution, the word used is "shall." The same difference in wording is to be found in the repealed corresponding sections of the Matrimonial Causes Act, 1857. The reason for the difference in the Act of 1857 was, I think, that as regards judicial separation, the Act hereby conferred upon the Divorce Court, with certain additions, the jurisdiction formerly exercised by the Ecclesiastical Courts as regards divorce *a mensa et thoro*, and directed the Divorce Court to act upon the principles on which the Ecclesiastical Courts had theretofore acted. But as regard dissolution the Act of 1857 created a new right, and defined in detail the conditions to which it was subject. No such detailed definition of the right to judicial separation and its conditions was necessary, being already regulated by the rules of law which had prevailed in the Ecclesiastical Courts. It is not a legal ground that the court thinks that it would be better that the relief to be granted should be dissolution and not judicial separation. Before the Act of 1923, when the only marital offence of the husband was adultery the wife could obtain no relief other than a decree of judicial separation. But, if there were no legal ground against it, she had a right to that decree. That right has not been taken away from her because an alternative remedy was given her by the Act of 1923.

COUNSEL: *Walter Frampton* and *H. W. M. Potter*, for the Petitioner. *Tyndale* and *Wavell-Paxton*, for the respondent.

SOLICITORS: *Firth and Co.*, for *Mr. Wilfrid Firth*, Brentford; *Oswald Hanson and Smith.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

The Union Society of London.

The Union Society of London met at the Middle Temple Common-room, on Wednesday, the 1st inst., at 8.15 p.m., to discuss the motion—"That in the opinion of this house, there should be no responsibility on authors for libel, unless a libellous intention towards the plaintiff is proved." The President, Mr. D. F. Brundrit (barrister), in opening, quoted the case of *Hulton* v. *Jones*, 1910, A.C. 20, which, in his opinion, established the legal position which it was the intention of the motion to attack. After reading certain passages from the speeches in the House of Lords, he argued that it was an intolerable position for an author not to describe any character in a derogatory sense lest he incur the heavy cost of a libel action. Mr. J. Single (barrister) opposed. There spoke in favour of the motion: Mr. K. Ingram (barrister). James, Ulma Prasada, and Mr. Robinson. Against: Mr. Donald Geddes (barrister), Mr. Thesiger, Major Olver, Mr. O'Connor, Mr. Tate, and Mr. Symmons.

The motion was lost by eight votes to six, and the house adjourned at 11 p.m.

The motion discussed by the Union Society of London at their Wednesday meeting was: "That this House approves the application by Railway Companies for road transport facilities." Mr. D. Geddes (barrister), in opening, after referring to the provisions of the London, Midland and Scottish Bill, said that the facilities asked for would benefit the public. They did not give the railway companies a monopoly, only a right to free competition, and moreover the public would be protected in any case by the provision in the Bill referred to that the Railway Rates Tribunal was to fix the rates to be charged for this transport. Mr. L. R. Laurence (barrister) opposed, and was supported by Mr. Salter Nichols (barrister), Mr. Sandilands, Mr. Baylis, Mr. O'Connor, the Hon. Treasurer, and the President. The opener was supported by Mr. K. Ingram (barrister), Mr. Olver (barrister), and Mr. Kingham (barrister). On a division the motion was carried by six votes to five.

United Law Society.

A meeting of the Society was held in the Middle Temple Common Room on Monday, 30th ult., Mr. F. W. Yates in the chair. Mr. W. E. Godfrey opened "That in the opinion of this House broadcasting should be used by all parties for political propaganda." Mr. R. W. Bell opposed. There also spoke Messrs. Pugh, Pearce, Ross, Burke, Duveen, Hughes, Guest, Tebbutt and W. H. Godfrey. Mr. W. E. Godfrey having replied, the motion was put to the house and carried by two votes.

Gray's Inn.

The Arden Scholarship of 1928 (£100 for three years) has been awarded to Mr. Christopher Nyholm Shawcross, a student of the Society.

Law Association.

The usual monthly meeting of the directors was held at The Law Society's Hall on Thursday, the 2nd inst., Mr. J. D. Arthur in the chair. The other directors present were: Mr. E. B. V. Christian, Mr. F. W. Emery, Mr. C. E. Few, Mr. P. E. Marshall, Mr. J. R. H. Molony, Mr. A. E. Pridham, Mr. J. E. W. Rider, Mr. John Venning, Mr. Wm. Winterbotham and Mr. W. M. Woodhouse. The sum of £90 was voted in relief of deserving applicants; thirty-one new members were elected, and other general business transacted.

Bar Golfing Society.

ANNUAL GENERAL MEETING.

The annual general meeting of the Bar Golfing Society was held in Lecture Room "A," King's Bench Walk, Temple, recently. In the absence of the captain, the Rt. Hon. The Lord Chief Justice, the chair was taken by Mr. E. G. Rand. The report for the past year disclosed a balance in hand of over £257. On the retirement of Lord Hewart of Bury, from the office of captain, Mr. E. G. Rand was unanimously elected for the ensuing year. Mr. G. B. McClure was elected joint hon. secretary with Mr. A. H. S. Vivian, and Mr. McClure was confirmed in his position as hon. treasurer. The following officers were also re-elected *en bloc*: president, The Rt. Hon. Lord Trevethin; vice-presidents, Viscount Finlay, The Marquess of Reading, Lord Justice Bankes, Lord Justice Scrutton, Lord Justice Atkin, and Sir R. A. McCall, K.C., K.C.V.O. Mr. E. W. Hansell, K.C., having retired from the office of hon. auditor, Mr. J. F. Tindal-Atkinson was elected in his place.

The Hon. Mr. Justice Russell, and Messrs. H. S. Preston, K.C., Bruce Thomas, J. F. Tindal-Atkinson and C. W. Measor retired from the committee, and the following members were elected to fill the vacancies: The Lord Chief Justice, and Messrs. F. S. A. Baker, L. L. Cohen, J. P. Purcell and A. Tylor.

The arrangements for the annual tournament of the society, which will be held over the Littlestone Club's course on 30th May to 2nd June (inclusive), were confirmed, and a vote of thanks to the retiring captain concluded the meeting.

Solicitors' Benevolent Association.

The monthly meeting of the directors of this Association was held on the 8th inst. at The Law Society's Hall, Chancery-lane, Mr. Charles E. Barry (Bristol) in the chair, the other directors present being Messrs. F. E. F. Barham, E. R. Cook, W. F. Cunliffe, T. S. Curtis, E. F. Dent, E. F. Knapp-Fisher, C. G. May, H. A. H. Newington, R. W. Poole, F. W. Steward (Wolverhampton), M. A. Tweedie, and A. B. Urmston (Maidstone). £650 was distributed in grants of relief, forty-one new members were elected, and other general business transacted.

The Bar Council.

Sir Thomas Hughes, K.C., has been appointed Chairman, Mr. E. A. Mitchell-Innes, C.B.E., K.C., Vice-Chairman, and Mr. J. F. W. Galbraith, K.C., M.P., Treasurer of the General Council of the Bar, and the following have been appointed additional members of the Council:—Sir Lynden Macassey, K.B.E., K.C., The Hon. Sir Malcolm Macnaghten, K.B.E., K.C., M.P., Mr. R. F. Bayford, O.B.E., K.C., Mr. H. Du Parcq, K.C., Mr. J. E. H. Benn, and Mr. E. H. Tindal Atkinson, C.B.E.

In Parliament.

DOUBTFUL MARRIAGES TO BE CONFIRMED.

Sir Vivian Henderson has presented to Parliament a Bill confirming provisional Orders by the Home Secretary making valid marriages solemnised in two new churches—St. Michael and All Angels, Westcliff, and St. Stephen, Haslingden Grane, Lancashire—in circumstances which make their validity doubtful. In the first case marriages were solemnised between the date of the consecration of the church and the sealing of the instrument giving the approval of the Ecclesiastical Commissioners. In the second case two persons were married before the execution of the instrument substituting the new church for the ancient parish church of St. Stephen.

Rules and Orders.

The Rules of the Supreme Court (No. 2), 1927. Dated December 12, 1927.

We, the Rule Committee of the Supreme Court, hereby make the following Rules:—

1. In sub-section (dd) of Rule 9 of Order V the words "the judges to whom" shall be substituted for the words "the judge to whom."

2. In Rule 9A of Order V the words "two or more" shall be substituted for the word "two" and the word "any" for the word "either."

3. The following Rules shall be inserted after Order XIV and shall stand as Order XIV A:—

"ORDER XIV A.

Summary Judgment for Specific Performance.

1. Where the defendant in an action in the Chancery Division has appeared to a writ of summons endorsed with a claim for specific performance of a contract in writing for sale or purchase of property the plaintiff may on affidavit made by himself or by any other person who can swear positively to the facts verifying the cause of action and stating that in his belief there is no defence to the action apply to the Judge for an order for specific performance of the contract and for such consequential accounts enquiries and directions as to payment of purchase money interest damages and costs or otherwise as the case may require. The Judge may thereupon unless the defendant by affidavit by his own viva voce evidence or otherwise shall satisfy him that he has a good defence to the action on the merits or disclose such facts as may be deemed sufficient to entitle him to defend make such order as may be just.

2. The application by the plaintiff under Rule 1 shall be made by summons returnable not less than four clear days after service accompanied by a copy of the affidavit and any exhibits referred to therein.

3.—(1) The defendant may show cause against such application by affidavit or the Judge may allow the defendant to be examined on oath.

(2) The Judge may if he thinks fit order the defendant or in the case of a corporation any officer thereof to attend and be examined upon oath or to produce any documents or copies of or extracts therefrom.

4. Leave to defend may be given unconditionally or subject to such terms as to giving security or time or mode of trial or otherwise as the Judge may think fit.

5. Where leave whether conditional or unconditional is given the Judge shall have power to give directions limiting the time within which pleadings are to be delivered and as to any interlocutory matter and may order the action to be set down for trial forthwith or as at such date as he shall think proper.

6.—(1) The costs of and incident to all applications under this Order shall be dealt with by the Judge on the hearing of the application who may order by and to whom and when the same shall be paid or may refer them to the Judge at the trial.

(2) If the plaintiff makes an application under this Order where the case is not within the Order or where the plaintiff in the opinion of the Judge knew that the defendant relied on a contention which would entitle him to unconditional leave to defend the application may be dismissed with costs to be paid forthwith by the plaintiff."

4. Rule 23 of Order XXXV shall be annulled and the following Rule shall be substituted therefor:—

"23. Every district registrar shall account for and pay over all monies paid into Court at the Registry of which he is registrar in such manner at such times and to such account as may be from time to time directed by the Lord Chancellor with the concurrence of the Treasury."

5. The following Rules shall be inserted in the Rules of the Supreme Court, 1883, after Order LIV D and shall stand as Order LIV E:—

"ORDER LIV E.

Appeals under the Clergy Pensions Measure, 1926.

1. Every appeal under sub-section (7) of section 23 of the Clergy Pensions Measure, 1926,* from a decision of the Church of England Pensions Board to the High Court shall be instituted in the Chancery Division, and shall be heard and determined by a single Judge of that Division whose decision shall be final.

2. The appeal shall be begun by originating summons intituled in the Matter of the bishop priest or deacon to whom the appeal relates and in the matter of the above-mentioned Measure and such bishop priest or deacon (if not appellant) and the Church of England Pensions Board shall be made respondents to the originating summons but no other person shall in the first instance be made a respondent without the direction of the Judge.

3. The originating summons shall state the grounds of appeal and no ground other than those stated shall (except with the leave of the Judge and on such terms as the Judge may think just) be taken by the appellant at the hearing of the appeal.

4. The appeal shall be brought within six weeks after the date of the decision appealed against or within such extended time as the Judge may allow.

5. The ordinary practice and Rules in the Chancery Division in so far as they are not inconsistent with the above-mentioned Measure or this Order shall apply to proceedings under this Order.

6. The costs of the appeal and of the proceedings connected therewith shall be in the discretion of the Judge."

6. Clause (16) of Rule 2 of Order LV shall be annulled and the following clause shall be substituted therefor:—

"(16) Applications for orders on the further consideration of debenture-holders' actions or of any cause or matter where the order to be made is for the distribution of an insolvent estate or for the distribution of the estate of an intestate."

7. Rule 19 of Order LIX shall stand as paragraph (1) of that Rule, and there shall be inserted the following paragraph as paragraph (2) thereof—

"(2) An appeal from any decision given under sub-section (4) of section 2 of the Therapeutic Substances Act, 1925,† shall be made within six months after the date on which notice of the decision is given to the appellant by the licensing authority."

8. Form No. 19 in Part I of Appendix A shall be annulled and the following Form shall stand in lieu thereof:—

"No. 19.

Certificate of Solicitor as to Assignment of Cause or Matter.

[Heading as in Form 1.]

I, A.B., solicitor for the above-named , hereby certify that the writ [*or* summons *or* petition] annexed

* 16–7 G. 5. No. 6. † 15–16 G. 5. c. 60.

hereto relates to the administration of or is so closely connected with the trusts or winding up to which the cause or matter entitled [*insert title*] and assigned to Mr. Justice relates as to be conveniently dealt with by the same Judge.

(Signed)
Solicitor for

(Countersigned)
[*Signature of Master.*]"

9. These Rules may be cited as the Rules of the Supreme Court (No. 2), 1927, and shall come into operation on the 1st day of January, 1928, and the Rules of the Supreme Court, 1883, shall have effect as amended by these Rules.

Dated the 12th day of December, 1927.

Cave, C. *Walter Hedley.*
Charles H. Sargant, L.J. *C. H. Morton.*
T. J. C. Tomlin, J. *Roger Gregory.*
T. R. Hughes.

Legal Notes and News.

Honours and Appointments.

The King has approved the appointments of Mr. ERNEST BRUCE CHARLES, C.B.E., K.C., and Sir TRAVERS HUMPHREYS, to be Justices of the King's Bench Division of the High Court of Justice, to fill the vacancies caused by the death of Sir Hugh Fraser and the promotion of Mr. Justice GREER to the Court of Appeal, these appointments restoring the number of King's Bench Judges to eighteen. Mr. Ernest Charles is the son of Sir Arthur Charles, a Lord Justice of Appeal, who died in 1921, and is a bachelor. Born in 1871, he was called to the Bar in 1896, took silk in 1913, and has filled the office of Recorder of Bournemouth and Southampton. Sir Travers Humphreys is a son of Mr. C. Olandis Humphreys, a London solicitor, and is sixty years of age. He was appointed Junior Treasury Counsel (Criminal) in 1908, and in 1916 succeeded Sir Richard Muir as Senior Counsel. He has been engaged principally in the Criminal Courts, and has appeared in most of the important criminal cases of recent years, receiving the honour of Knighthood for his eminent services in 1925. He was successively Recorder of Chichester and Cambridge.

The Lord Chancellor has appointed Mr. WILLIAM F. HOWARD, J.P., Solicitor (Registrar of the Spalding County Court) to be (also) Registrar of the Holbeach County Court, in succession to the late Mr. T. C. Willders. Mr. Howard was admitted in 1894.

The Lord Chancellor has appointed Mr. H. T. METHOLD to be Master in Lunacy in the place of Master HILDYARD, K.C., who has been appointed a Judge of County Courts. Mr. Hildyard was called to the Bar by Lincoln's Inn in 1899; became a Bencher of his Inn, and was made a Master in Lunacy in 1923.

The Lord Chancellor has appointed Mr. ROBERT MORRELL GREENWOOD, C.B.E., to be a Taxing Master of the Supreme Court.

Mr. I. EDWARD SEAGER, solicitor, has been appointed Deputy Clerk of the Peace and Deputy Clerk of the East Sussex County Council. Mr. Seager was admitted in 1909.

In consequence of the appointment of Sir Travers Humphreys, the Senior Prosecuting Counsel to the Crown, at the Central Criminal Court, as a Judge of the King's Bench Division, the Attorney-General has made the following appointments:—

Mr. EDWARD PERCIVAL CLARKE to be Senior Counsel.
Mr. EUSTACE CECIL FULTON to be second Senior Counsel.
Mr. HENRY DELACOMBE ROOME to be third Senior Counsel.
Mr. GEOFFREY D. ROBERTS to be first Junior Counsel.
Mr. GERALD DODSON to be second Junior Counsel.
Mr. GEORGE BUCHANAN MCCLURE to be third Junior Counsel.

Mr. Percival Clarke is the eldest son of Sir Edward Clarke, K.C., and was born in 1872. He was called to the Bar in 1894, and made a Bencher of Lincoln's Inn in 1925. He was appointed a Junior Counsel to the Treasury in 1912, and a Senior in 1920. Mr. Eustace Fulton, who becomes second Senior Counsel, is a son of the late Sir Forest Fulton, K.C., formerly Recorder of London. He was called to the Bar by the Middle Temple in 1904. Mr. Henry D. Roome, the new third Senior Counsel, was called by the Middle Temple in 1907, has been the co-editor of three editions of "Archbold's Pleading Evidence and Practice in Criminal Cases," whilst Mr. Roberts, Mr. Dodson, and Mr. McClure, were called by the Inner Temple in 1912, 1907 and 1917, in that order.

Mr. Deputy T. HOWARD DEIGHTON, solicitor, 90, Cannon-street, E.C.4 (Messrs. Timbrell, Deighton & Nichols), has been appointed Chairman of The Law and City Courts Committee of the City of London. Mr. Deighton was admitted in 1887.

Resignations, etc.

Mr. SYDNEY PITT, solicitor, has resigned the Clerkship of the Armourers' and Brasiers' Company which he has held since 1911.

Mr. A. A. H. HARDWICK, solicitor, is resigning the office of Clerk to the Burgess Hill Urban District Council and will in future devote the whole of his time to his private practice.

THE BRITISH SAILORS' SOCIETY.

In connexion with "disclaimers" concerning the National Sailors' Society which have recently appeared in many newspapers, the directors of the British Sailors' Society intimate that the National Sailors' Society is not in any way connected with the British Sailors' Society.

THE CRIMINAL JUSTICE ACT.

In his charge to the Grand Jury at the Hereford Assizes recently, Mr. Justice Roche said the Criminal Justice Administration Act, 1925, was being misunderstood and overworked by magistrates. He noticed that when indictable cases were dealt with by magistrates offenders kept coming before the Court, but at the Assize Court or Quarter Sessions offenders rarely appeared again, because the dignity and importance of the court caused a lasting impression in their minds. He therefore hoped that magistrates in future, when confronted with a serious case, would not hesitate to commit. Judges did not want more work, but his view he considered to be right.

PROTECTION OF PUBLIC MEETINGS.

Seven men and one woman were charged at the Gateshead County Police Court recently with offences under the Public Meetings Act, 1908, at a meeting held by the Non-political Miners' Union on 22nd January. They were each fined £1 and ordered to pay 10s. 6d. solicitor's fee. It was stated that they went to the meeting and caused such an uproar that it had to be abandoned. The police were called in to prevent a free fight.

WHAT IS "ISSUING A PROSPECTUS?"

The last judgment written by Lord Atkin as a Lord Justice was read by Mr. Justice Eve, on Tuesday, and in it he referred to the activities of "share pushers" and defined what was meant in the Companies Act by the issue of a prospectus to the public.

Mr. W. A. G. Lynde appealed from a judgment of Mr. Justice Salter, dismissing an action brought by him against Mr. A. G. Nash, managing director of British and Foreign Industries Ltd., who have works at Liverpool.

Lord Justice Scrutton said the action was for deceit and breach of the provisions of the Companies Act. On the findings of the jury the action for deceit failed, and he thought there was no evidence of issue to the public of the documents complained of. Therefore the appeal should be dismissed.

Lord Atkin, in his judgment, said the remedial nature of company legislation would be gravely impaired if the view were accepted that an offer was not issued to the public when a copy of it was given to one person for the purpose of inviting others to subscribe capital. A judge might be allowed to know of the grave disadvantages of the activities of "share pushers." Could they evade the law in that way? He thought not. It constituted an issue of the document to the public.

Mr. Justice Eve concurred with Lord Atkin, and the appeal was allowed.

A judgment for £2,000 was accordingly entered in favour of the plaintiff.

COPYRIGHT IN MECHANICALLY PERFORMED MUSICAL WORKS.

The Board of Trade have appointed Mr. H. Claughton Scott, K.C., Mr. William Cash, F.C.A., and Mr. W. S. Jarratt (Comptroller General of Patents, Designs and Trade Marks), to hold a public inquiry under s. 19 of the Copyright Act, 1911, into the rate of royalty fixed by that section to be paid to the owners of copyright in musical works in respect of the making of records, etc., for the mechanical performance of such works.

The secretary of the inquiry is Mr. B. G. Crewe, M.B.E., Industrial Property Department, 25, Southampton-buildings, London, W.C.2.

Sir Travers Humphreys.

The Recorder (Sir Ernest Wild, K.C.), on taking his seat at the Central Criminal Court on Monday, addressing the members of the Bar, said he was sure the judges and practitioners at the Central Criminal Court desired to express the satisfaction occasioned by the elevation of Sir Travers Humphreys to the Judiciary.

"Sir Travers Humphreys," continued the Recorder, "may be properly described as our guide, philosopher, and friend, and it was less than a week ago, by a happy circumstance in this very court, that he, as Senior Treasury Counsel, opened his last case as advocate. Soon from this seat he will be giving to the Bench those admirable qualities wherewith he adorned the Bar, and chief among those qualities, I am sure you will agree, were impartiality, lucidity, conciseness, restrained humour, infinite pains, and wide knowledge of the criminal law. At the zenith of his intellectual and forensic powers Sir Travers Humphreys will still further strengthen the Judicial Bench, already strong. We, his friends, warmly felicitate him and the public."

Sir Henry Curtis Bennett, K.C., asked to be allowed to associate himself, on behalf of the Bar practising at that court, with what the Recorder had said. They had, by the elevation of Sir Travers Humphreys to the Bench, lost a great advocate—the greatest advocate, he thought, that this court had seen for some years, but he had no doubt the Bench and the public had gained a great judge.

Law and Logic.

Many strange illusions about England are, says *The Daily Telegraph*, handed down among English people. They love to believe, for example, that the English nation suffers from grandmotherly laws and regulations of peculiar severity, and that the disabilities of Sunday in England are beyond the worst dreams of the gay Continent. Therefore we pray your attention for the case of M. Castille, chemist, of Paris. Each nation has the Dora it deserves. The French tyrant has decreed that on Sundays only one appointed chemist's shop in each scheduled district shall dispense relief to agonised citizens. The shop of M. Castille is not such a one. To the French Dora, a lady of intelligence such as delights us in our own, it is no matter that he alone would be employed if the shop were open. When he did open it she took him before the magistrate. M. Castille has the perseverance of the poetical spider. He has opened it a hundred and thirty times and paid £320 in fines.

Dora did not turn a hair. M. Castille felt the need of some more drastic defiance. When he opened his shop last Sunday there was a notice in the window warning his customers to postpone all illness till Monday; he was not going to sell drugs but newspapers. The wisdom of the Gallic Dora, infinite as hers who rules England, sees no harm in a chemist vending newspapers sabbatically; it is only when he sells drugs on Sundays that he becomes a criminal. And so next Sunday M. Castille will sell chickens, and the Sunday after chocolates, and the next Sunday fish. We wish him well. The demonstration is complete. No invention of the human mind could be more illogical than these Doric laws. But if M. Castille expects that a law will be repealed because it is unreasonable he is too sanguine.

Court Papers.

Supreme Court of Judicature.

Rota of Registrars in Attendance on

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve.	Mr. Justice Russell.
Monday Feb.27	Mr. Bloxam	Mr. Synge	Mr. *Bloxam	Mr. Hicks Beach
Tuesday .. 28	Jolly	More	More	Bloxam
Wednesday 29	Hicks Beach	Ritchie	*Hicks Beach	More
Th'rsd'y Mar. 1	Synge	Bloxam	Bloxam	Hicks Beach
Friday 2	More	Jolly	*More	Bloxam
Saturday .. 3	Ritchie	Hicks Beach	Hicks Beach	More
	Mr. Justice Romer.	Mr. Justice Astbury.	Mr. Justice Tomlin.	Mr. Justice Clauson.
Monday Feb.27	Mr. More	Mr. Synge	Mr. Jolly	Mr. Ritchie
Tuesday .. 28	*Hicks Beach	*Jolly	*Ritchie	Synge
Wednesday 29	*Bloxam	Ritchie	*Synge	Jolly
Th'rsd'y Mar. 1	*More	*Synge	*Jolly	Ritchie
Friday 2	Hicks Beach	Jolly	*Ritchie	Synge
Saturday .. 3	Bloxam	Ritchie	Synge	Jolly

* The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 8th March, 1928.

	Middle Price 22nd Feb.	Interest Yield.	Yield with Redemption.
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	85½	4 13 6	—
Consols 2½%	55½	4 14 0	—
War Loan 5% 1929-47	101⅞	4 18 0	4 18 9
War Loan 4½% 1925-45	97¼	4 12 6	4 16 6
War Loan 4% (Tax free) 1929-42	101½	3 19 0	3 19 6
Funding 4% Loan 1960-1990	88¾	4 10 6	4 14 0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	92¾xd	4 6 6	4 7 0
Conversion 4½% Loan 1940-44	97¼	4 12 0	4 16 0
Conversion 3½% Loan 1961	77⅛	4 11 0	—
Local Loans 3% Stock 1921 or after	64½	4 13 0	—
Bank Stock	256	4 12 0	—
India 4½% 1950-55	93½	4 17 0	5 0 0
India 3½%	71½	4 18 0	—
India 3%	6 ½	4 18 0	—
Sudan 4½% 1939-73	93½	4 15 6	4 17 0
Sudan 4% 1974	84½	4 15 0	4 17 0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84	3 13 0	4 6 0
Colonial Securities.			
Canada 3% 1938	86	3 12 0	4 18 0
Cape of Good Hope 4% 1916-36	94	4 5 0	5 0 6
Cape of Good Hope 3½% 1929-49	82	4 6 0	5 0 0
Commonwealth of Australia 5% 1945-75	99½	5 0 6	5 2 6
Gold Coast 4½% 1956	94	4 15 6	4 17 6
Jamaica 4½% 1941-71	94	4 17 0	4 18 6
Natal 4% 1937	94	4 5 0	5 0 0
New South Wales 4½% 1935-45	91	4 19 0	5 7 0
New South Wales 5% 1945-65	98	5 2 0	5 3 0
New Zealand 4½% 1945	96	4 13 0	4 17 6
New Zealand 5% 1946	102	4 18 0	4 16 6
Queensland 5% 1940-60	99	5 1 0	5 3 0
South Africa 5% 1945-75	102¾	4 17 6	5 0 0
South Australia 5% 1945-75	98½	5 1 6	5 0 0
Tasmania 5% 1945-75	101	4 19 0	5 0 0
Victoria 5% 1945-75	99	5 1 0	5 0 0
West Australia 5% 1945-75	99	5 1 0	5 2 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	63	4 15 6	—
Birmingham 5% 1946–56	103¾	4 16 6	4 17 0
Cardiff 5% 1945–65	101¼xd	4 19 0	4 18 0
Croydon 3% 1940–60	69	4 7 0	5 0 0
Hull 3½% 1925–55	77	4 9 6	5 0 0
Liverpool 3½ Redeemable at option of Corporation	74	4 14 6	5 0 0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54	4 12 6	—
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	64	4 13 6	—
Manchester 3% on or after 1941	63	4 14 6	—
Metropolitan Water Board 3% 'A' 1963–2003	65	4 12 0	4 17 0
Metropolitan Water Board 3% 'B' 1934–2003	65	4 12 6	4 15 6
Middlesex C. C. 3½% 1927–47	83	4 5 6	4 17 0
Newcastle 3½% Irredeemable	72	4 17 0	—
Nottingham 3% Irredeemable	63	4 15 6	—
Stockton 5% 1946–66	101	4 19 0	4 19 0
Wolverhampton 5% 1946–56	102	4 19 0	5 0 0
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	81½	4 18 6	—
Gt. Western Rly. 5% Rent Charge	100	5 0 0	—
Gt. Western Rly. 5% Preference	99	5 1 0	—
L. & N. E. Rly. 4% Debenture	78½	5 2 0	—
L. & N. E. Rly. 4% Guaranteed	75	5 6 6	—
L. & N. E. Rly 4% 1st Preference	70¼	5 13 0	—
L. Mid. & Scot. Rly. 4% Debenture	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Guaranteed	80	5 0 0	—
L. Mid. & Scot. Rly. 4% Preference	75½	5 6 0	—
Southern Railway 4% Debenture	79¾	5 0 0	—
Southern Railway 5% Guaranteed	100	5 0 0	—
Southern Railway 5% Preference	95	5 5 0	—

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